



House of Commons  
Transport Committee

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# Community transport and the Department for Transport's proposed consultation

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to the report*

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## Transport Committee

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## Summary

The Transport Act 1985 and associated guidance set out a relatively light touch regulatory and licensing regime for the provision of community transport (CT). For decades, the regime has provided an effective framework within which not-for-profit organisations can effectively provide community-based local transport services to people who would otherwise suffer isolation, often plugging gaps in commercial provision. Broadly, it still achieves this.

The Department and some community transport organisations (CTOs) have acknowledged that UK legislation and guidance have not kept pace with developments in practice and European Regulations, and some changes have become necessary. In particular, some commercial operators have been concerned about the CT permit system creating unfairness in competition for contestable contracts for many years.

Local authorities and CTOs have acted in good faith, and generally in accordance with the longstanding official guidance. Moreover, many CTOs have acted with the acquiescence and encouragement of successive governments to deliver public sector contracts and become more self-sufficient and “professional” in outlook. They also deliver considerable wider social benefits. A lack of robust data makes it difficult to find evidence of widespread unfair detrimental effects on commercial operators. In some areas, the effects on some operators—particularly small-to-medium-sized, often family-run, businesses—appear to have been substantial but the geographical extent of the problem is uncertain. Proposals to address instances of unfairness should be considered in the forthcoming consultation, but the Department must not use a sledgehammer to crack a nut.

Only when the threat of legal action became imminent did the Department move away from its position of treating “not-for-profit” operators as acting for “non-commercial” purposes under EU Regulations. The Department did not address valid concerns appropriately, and acted too slowly. The Department should consider whether a satisfactory outcome may have been achieved earlier had it tackled relatively localised issues head on several years ago, and learn the lessons for its future regulation of policy areas which are its responsibility.

The Department’s letter of 31 July to all permit issuers, in which it set out the potential implications for the broad CT sector of a licensing investigation into an individual CTO, was well-intentioned but, in the light of its new understanding of the potential effects, some of its content could be deemed ill-judged. In trying to clarify and calm the situation, it achieved the opposite, creating confusion and a level of panic in the CT sector. The uncertainty led to some local authorities halting commissioning processes and, in some cases, unnecessarily beginning the process of withdrawing contracts from CTOs. It also led to Traffic Commissioners suspending the issue of permits.

The need for substantial further clarification is evident in the Department’s note to local authorities of 9 November. It is highly regrettable that it took the Department more than three months to provide a potentially more compatible and workable UK definition of “non-commercial” in the context of CT services. There is still more work to do in fully understanding the implications.

While the Department has been forced to act under the threat of imminent legal action, its consultation should avoid a narrow, legalistic focus on bringing UK guidance and legislation into line with relevant EU Regulations. The consultation must also be used as an opportunity to consider reforms designed not only to achieve compatibility, but also to continue to achieve the key public policy objective of the sector—the provision of high quality, safe and secure local community services for people who might otherwise be left isolated. Protection of these services, the huge majority of which are uncontested, and by definition cannot be provided by commercial operators, is imperative. We welcome the Minister's commitment to maintain the community transport permit system, and the 9 November proposals to achieve this. Given the current level of paralysis in the CT sector, the Department should launch the consultation, with its scope broadened in line with our recommendations, as soon as practicable.

# 1 Introduction

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## What is community transport?

1. Community transport (CT) is a very broad term for local road passenger transport services delivered by charitable and other not-for-profit organisations, typically where there is no viable commercial market. The core work of community transport organisations (CTOs) has traditionally included:

- door-to-door transport, from relatively informal lift-giving by volunteer car drivers to more organised schemes such as Dial-a-Ride or Dial-a-Bus, for people with disabilities and mobility difficulties;
- minibus travel for defined groups of people, particularly the elderly or others who struggle to get out and about on their own, for example to take them on shopping trips; and
- community bus services, where there are no existing commercial routes, such as in remote rural areas.<sup>1</sup>

2. The Transport Act 1985 legislated for a light touch licensing regime for these types of services relative to conventional, profit-making operations. Sections 18 to 23A of the Act provide exemptions from full Passenger Service Vehicle (PSV) operator and Passenger Carrying Vehicle (PCV) driver licensing requirements, including the Driver Certificate of Professional Competence (CPC), which are designed to ensure stringent service and safety standards in the commercial sector.<sup>2</sup> The system is intended to be a more proportionate and cost-effective regime for services of community benefit that might otherwise not exist. Not-for-profit CT services have therefore been allowed to operate under:

- Section 19 permits, which may be used to operate minibuses carrying nine to 16 passengers (or larger vehicles with a special s19 “large bus permit”) where they are run on a not-for-profit basis and carry restricted groups of passengers (e.g. school children or people taking part in specified community activities); and
- Section 22 permits, which may be used to operate vehicles carrying nine or more passengers, also on a not-for-profit basis, and carry members of the general public i.e. provision of community bus services where no commercial routes exist.

3. Permits may be issued by the regional Traffic Commissioners for Great Britain, the independent statutory body, and a range of “designated bodies”, including community organisations concerned with “education; religion; social welfare; recreation; and other activities of benefit to the community.” Designated bodies also include local authorities, which can issue permits to themselves, for use in relation to in-house CT services run by council staff, and to local organisations concerned with the community benefit activities listed above.<sup>3</sup>

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1 Mobility Matters (CTT0271); Transport Committee, *Passenger transport in isolated communities*, Fourth Report of Session 2014–15, HC 288, paras 32–7

2 See ‘Public service vehicle (PSV) operator licensing guide’ and ‘Become a lorry or bus driver’, GOV.UK, accessed 28 November 2017

3 ‘Section 19 and 22 permits: not for profit passenger transport’, GOV.UK, accessed 28 November 2017

## Our inquiry and this Report

4. We launched our inquiry into community transport in October, in response to concerns that many not-for-profit community minibus services for vulnerable and potentially isolated people were under existential threat from proposed changes to licensing law and the Department for Transport's (DfT) guidance. We were also aware that Members on all sides of the House had been contacted by concerned community transport providers and other constituents, and had raised the issue in Parliamentary Questions and debates.<sup>4</sup>

5. We received nearly 300 submissions in response to our call for evidence. These demonstrated the huge strength of feeling amongst those who deliver and use community-run services. In our first evidence session, we heard from providers of not-for-profit community transport, alongside commercial operators, some of whom have been seeking legal redress against what they see as unfair practices in the not-for-profit sector. We then heard from local transport commissioners in our second session, followed by those responsible for guidance on the law and its enforcement: the Driver and Vehicle Standards Agency (DVSA); the Traffic Commissioners for Great Britain; and the DfT's Parliamentary Under Secretary of State for Roads, Local Transport and Devolution, Jesse Norman MP.<sup>5</sup>

6. Alongside our formal evidence-taking, we opened an online forum, as a more accessible way for community groups, service users and their families to express their views. It was abundantly clear from comments on the forum that not-for-profit community transport services are valued extremely highly.<sup>6</sup> We are grateful to all of those who took the time to contribute to our inquiry, either through written evidence, oral evidence or via our online forum.

7. The DfT intends to launch a consultation shortly on its proposals to amend legislation and guidance, in response to long-standing concerns and recent legal challenges at European level from a group of commercial operators (see chapters 2 and 3). Our inquiry and this Report are intended to scrutinise the DfT's oversight of the community transport sector and emphasise key issues that must be addressed in the consultation, with a view to ensuring that any changes to legislation and guidance do not put at risk vital services that enhance the lives of many thousands of people. Our recommendations on the consultation are set out in chapter 4.

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4 See, for example, PQ [10472](#) [on Community Transport: Licensing], 13 September 2017; HC Deb, 19 October, [col 988](#); [col 990](#)

5 For full terms of reference see "[Community Transport inquiry launched](#)", Transport Committee press release, 10 October 2017. A full list of witnesses is set out at the end of this Report.

6 '[Community Transport online forum](#)', Transport Committee, accessed 6 December 2017

## 2 UK legislation and guidance and emerging concerns

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### Nature and scale of the CT sector

8. The nature and scale of CT has developed considerably since 1985. CTOs operating under permits are now extremely diverse, including:

- grass-roots voluntary car schemes;
- single vehicle community organisations providing day trips for local elderly or disadvantaged people;
- national charities and organisations such as The Scout Association and Age UK; and
- large organisations whose primary purpose is the provision of road passenger transport (a relatively small number of the larger, transport-only CTOs now operate hundreds of vehicles across extensive geographical areas).<sup>7</sup>

9. Several factors have driven developments in CTO practice. Since at least 2010, there has been a desire, at national and local government level, to increase community-based organisations' involvement in the delivery of public services, both in pursuit of value for money and to boost community cohesion. At the same time, budgetary constraints have reduced local authority funding for subsidised road transport services of all kinds, which has in turn increased demand for CT. CTOs have been encouraged to become more self-sufficient by seeking out alternative income streams, and operating on a more business-like model, including by tendering for local authority contracts. A common strategy, particularly for the larger, transport-only CTOs has been to tender for home-to-school and adult social care transport contracts, for example.<sup>8</sup>

10. CTOs reported that core CT services cannot typically be sustained by passenger fares alone. This is because of the relatively high cost, enhanced quality aspects of these services, such as the need for specially equipped vehicles, suitably trained staff and passengers' requirements for door-to-door, rather than kerb-to-kerb, assistance. Given financial constraints in recent years, CTOs report that a level of cross-subsidisation of core CT services from income from local authority contracts has been essential. Some commercial operators claim this cross-subsidisation creates unfairness in competition for some contracts, particularly in markets that are often contested by the commercial sector, such as home-to-school transport. CTOs argue any substantial threat to contract-based income would put core CT services at risk.<sup>9</sup>

11. The Community Transport Association (CTA), the recognised UK body representing CTOs of all sizes and types, argues that CTOs have developed the above operating model

<sup>7</sup> Department for Transport ([CTT0234](#)); Ealing Community Transport ([CTT0272](#)), for example, has grown from a small CTO, established in west London in 1979, to also deliver services in Cheshire, Cornwall and Dorset. See 'Services by area', ECT, accessed 29 November 2017.

<sup>8</sup> Community Transport Association ([CTT0197](#)). See also, for example, Wyre Forest Dial-A-Ride ([CTT0044](#)); Shencare Community Transport ([CTT0083](#)); The Friendly Transport Service ([CTT0104](#)); Preston Community Transport Ltd ([CTT0159](#)); Croydon Accessible Transport ([CTT0266](#))

<sup>9</sup> See, for example, Mobility Matters ([CTT0271](#))

with the acquiescence and encouragement of local authority transport commissioners and successive national governments, in accordance with the official guidance.<sup>10</sup> This has been acknowledged by the DfT.<sup>11</sup>

12. Furthermore, CTOs, local authorities and the DfT all emphasised the wider social value of CT.<sup>12</sup> The Minister described it as an “unbelievably diverse, interesting and socially valuable sector”.<sup>13</sup> This was borne out by the comments on our online forum. The below comment is typical:

Community transport carries my 89 year old mother to Day Centres three times a week. This is an invaluable service as she would be unable to travel by public service as she suffers from dementia. The drivers and escorts are incredibly caring and compassionate and provide an invaluable service. Without their support, my mother's quality of life would suffer immeasurably.<sup>14</sup>

13. **The pressure on community transport organisations to cross-subsidise core, socially valuable work from income earned from contracts such as home-to-school transport has to some extent, in some areas, been driven by a lack of available local authority grant funding in recent years. Further investigation of this may be useful, and we may choose to consider the adequacy of funding for socially valuable but commercially unviable community transport services, and the effects on local transport markets, particularly for home-to-school transport, later in this Parliament.**

## UK legislation and guidance on permit use

14. There are two main areas of contention in interpretation of UK law and guidance between some commercial operators and CTOs—the employment of paid drivers in the CT sector and CTOs tendering for contracts.<sup>15</sup>

### *Transport Act 1985 on voluntary drivers*

15. In relation to s19 and s22 permits, s23 of the 1985 Act requires that:

- (a) The driver receives no payment for driving except—
  - (i) Reimbursement of any reasonable expenses incurred by him in making himself available to drive; and
  - (ii) An amount representing any earnings lost as a result of making himself available to drive in exceptional circumstances.

This does suggest the law intended permit-based drivers to be volunteers.<sup>16</sup>

10 [‘Important message from the CTA's Chief Executive, Bill Freeman’](#), CTA, accessed 29 November 2017

11 Letter from Stephen Fidler, Head of Buses and Taxis Division, DfT, to section 19 and 22 permit issuers, 31 July 2017 [not published]

12 See, for example, CTA ([CTT0197](#)); Mobility Matters ([CTT0271](#)); [Q86](#) [Anna Whitty]; [Q106](#) [Leon Daniels]

13 [Q148](#) [Jesse Norman]

14 Comment by Helen Owens, 17 November 2017, [‘Community Transport online forum’](#)

15 Bus and Coach Association ([CTT0045](#))

16 Transport Act 1985, [Section 23](#)

16. The CTA's advice to its members, however, has relied on the DfT's accompanying guidance, *Section 19 and 22 permits: not-for-profit passenger transport*, which sets out detailed requirements for the issue and use of permits; advice to permit holders on driver and vehicle safety; and guidance on the two areas of contention—driver licensing and pay, and permit holders tendering for contracts.

17. The guidance states that, in some circumstances, drivers can be paid to drive nine to 16 passenger vehicles under permit rules. The licensing conditions vary according to when the driver obtained a full B (car) licence. Those granted a full licence before 1 January 1997 were automatically granted an additional D1 (small bus, not for hire or reward) entitlement. The guidance states these drivers may drive a nine to 16 passenger minibus under permit, and be paid to do so.

18. Different rules apply to drivers who passed their full car driving test after 1 January 1997. These drivers did not automatically receive the D1 entitlement, and may only drive a nine to 16 passenger minibus under permit if they meet a number of conditions, including that they must have held a full B licence for at least two years and that “they receive no payment or other consideration for driving other than out-of-pocket expenses.”

19. The CTA acknowledges the restriction on permit operators employing paid drivers who do not hold a D1 entitlement, but its advice to CTOs notes:

[...] there is a legal opinion that where an employee does not have driving as part of their job description and they receive no more pay as a result of their driving duties; they could be considered to be meeting the condition [...]. This opinion has not been tested in a court but has been accepted within the voluntary sector.<sup>17</sup>

The Bus and Coach Association claimed this is a part of the CT sector's attempt to “manipulate the rules” in its own favour.<sup>18</sup>

### ***Permit holders tendering for contracts***

20. The guidance is clear that the legislation does not allow local authorities to accept a tender to operate subsidised public bus services from holders of a s19 permit. There is no such restriction, however, on s19 permit holders providing services under contract to the categories of passenger specified for that permit. The guidance also states there is “no legal barrier” on local authorities accepting tenders from s22 permit holders, including for subsidised local bus services. It further states:

When issuing an invitation to tender it is for the local authority to specify the criteria against which bids will be considered and whether they're prepared to accept tenders from permit holders.

There is a clear stipulation that “Contracts can't be undertaken with a view to making a profit as this would invalidate the permit.”<sup>19</sup>

17 ['Who can drive our minibus operated using section 19 or 22 permits?'](#), CTA, accessed 30 November 2017

18 Bus and Coach Association ([CTT0045](#))

19 ['Section 19 and 22 permits: not for profit passenger transport'](#), GOV.UK, accessed 30 November 2017

21. **The community transport sector has developed considerably since the Transport Act 1985 came into force. Broadly, community transport organisations have developed their operating models with the acquiescence or encouragement of local government and successive national governments. In particular, they have responded to calls for them to seek out new funding streams and become more business-like in approach. Some have achieved this very successfully at the same time as delivering considerable social benefits. Given that they have acted in good faith, and generally in line with the longstanding guidance, it would now be unjust if planned changes were to be their downfall. In these circumstances, it is incumbent on the Department to handle any necessary changes with particular care and sensitivity.**

### Extent of competition in contestable markets

22. It was surprisingly difficult for us to assess the extent to which CTOs compete with commercial operators for the same work, or the geographical extent of the problem, due to a lack of data. Martin Allen, founder of the Bus and Coach Association (BCA), a membership organisation for commercial operators set up to campaign against what it sees as misuse of the permit system, suggested CTO competition in contestable markets was very widespread, with CTOs now competing for work “in nearly every major town and city.”<sup>20</sup> The Confederation of Passenger Transport (CPT, the recognised national trade body for the commercial bus and coach sector), by contrast, told us it only had concerns about improper use of a “tiny minority” of permits.<sup>21</sup>

23. Mr Allen’s assessment that competition for contracts was widespread appeared to be based on responses from local authorities to his requests under the Freedom of Information (FoI) Act 2000. He told us all but one of the local authorities that had responded under FoI confirmed they held contracts with CTOs.<sup>22</sup> This, in itself, however, is unsurprising given developments in the sector over at least the last decade, as described above. Some local authorities now put all core CT services out to tender.<sup>23</sup> The existence of local authority contracts with CTOs does not, on its own, prove widespread competition by CTOs in genuinely contestable markets.

24. After our evidence session on 27 November, the Association of Transport Co-ordinating Officers (ATCO, the body for local authority transport professionals) shared with us its impact assessment conducted for the DfT in October. Of 24 local authorities that responded to its survey, 21 contracted with local CTOs, which held a total of 547 contracts, the majority to deliver home-to-school and adult social care transport. The very large majority of these contracts had been contested—only 94 had been awarded to the only bidder—but the extent to which there was competition with the commercial sector remains unclear.<sup>24</sup>

25. Notwithstanding the uncertainty about the scale of the issue, some commercial operators do appear to have experienced serious detrimental effects. Bearwood Coaches, a commercial operator based near Smethwick in the West Midlands, for example, claimed that, from the time a local CTO was established in 2003 to 2014, it lost 38 of its 65 local

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20 [Q17](#)

21 [Q2](#) [Steven Salmon]

22 [Q17](#)

23 See, for example, [Q100](#) [Peter Shelley]

24 ATCO ([CTT0281](#))

authority contracts to deliver home to school transport for disabled children. Its annual revenue nearly halved in that time from around £1 million to just over £500,000.<sup>25</sup> We received similar evidence from a handful of other commercial small-to-medium-sized bus, coach, taxi and private hire businesses.<sup>26</sup>

26. When we challenged local authorities on the fairness of CTOs utilising vehicles operating under the permit system to compete with commercial operators, Dominic Davidson, Senior Transport Co-ordinator at Staffordshire County Council, conceded there may be unfairness in some places, but he did not believe the scale of the problem was “anywhere near the level that has been made out.”<sup>27</sup> Furthermore, a range of witnesses emphasised that relations between the CT and commercial sectors were perfectly harmonious in many places.<sup>28</sup> The CTA argued the system was broadly working as intended:

In many areas community transport operators will fill gaps in the commercial and subsidised bus network through the provision of community buses and demand-responsive solutions. This is often done with the knowledge and support of commercial operators who benefit from being able to leave both marginal and specialist services to a parallel network of not-for-profit providers and volunteers.<sup>29</sup>

27. This has been echoed by the Minister, Jesse Norman MP, who wrote to all MPs on 5 October, emphasising that “the system is generally working well and we have no plans to change it.”<sup>30</sup>

28. Even Mr Allen, who has doggedly driven the legal challenge on behalf of affected commercial operators (discussed in chapter 3), has never intended the effects of change to be felt across the entire CT sector. He told us his focus was on the “multi-million pound businesses”, which, as he saw it, had “grown up from misuse of the permit system”; it was not his intention to “hit vital core services to the community”.<sup>31</sup>

**29. The Transport Act 1985 and associated guidance sets out a relatively light touch regulatory and licensing regime for the provision of community transport. For decades, the regime has provided an effective framework within which not-for-profit organisations can effectively plug gaps in commercial provision and provide community-based local transport services to people who would otherwise suffer isolation. Broadly, it still achieves this.**

**30. Some commercial operators appear to have suffered substantial detrimental effects from potentially unfair competition from community transport organisations in contestable markets. There is, however, a notable lack of reliable evidence against which to assess whether the practices of community transport organisations create widespread unfairness or the geographical extent of the problem. Proposals to address**

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25 Bearwood Coaches ([CTT0280](#))

26 See, for example, Bus and Coach Association ([CTT0045](#)); VIP Taxis Ltd ([CTT0161](#)); J&C Coaches Ltd ([CTT0198](#)); Impact Group Limited ([CTT0220](#))

27 [Q117](#)

28 See, for example, [Q14](#) [Mr Salmon]; Westway CT ([CTT0174](#))

29 CTA ([CTT0197](#))

30 Letter from the DfT Minister, Jesse Norman MP, to all MPs, 5 October 2017 [not published]

31 [Q37](#)

**instances of unfairness should be considered in the forthcoming consultation but, given the acknowledged wider social benefits of community transport, the Department should proceed with caution. It must not take a sledgehammer to crack a nut.**

### CTO safety standards

31. The DfT noted that the current legal challenges have arisen in part because of questions about the appropriateness of two service providers, competing for the same contracts, having to meet different road safety standards. It offered no data, however, on the relative safety records of PSV operators and CT permit holders.<sup>32</sup>

32. The BCA claimed CTOs utilising the permit system were operating at “a much lower safety standard” than PSV operators.<sup>33</sup> However, any suggestion that the safety records of CTOs were inferior was strongly refuted by CTOs and local transport commissioners. Transport for London, for example, told us the safety records of its CTOs were “excellent”.<sup>34</sup> Dominic Davidson of Staffordshire County Council said:

It could be argued that on paper there are lower levels of regulation, but in practice I see exactly the same standards of vehicle maintenance, regular safety inspections, good MOT records, good levels of driver training and excellent compliance records. The contractors we deal with in the CT sector have consistently good compliance records.<sup>35</sup>

33. There is, however, a lack of data by which to assess the relative safety records. Mobility Matters noted that it is not possible to separate out and compare PSV and permit operators from official road safety data. It emphasised, however, that the accident rates of eight to 16 seater passenger vehicles, the type most commonly used by CTOs, have remained stable and low compared to larger buses and coaches for several years. While it did not suggest that larger PSV operator vehicles are driven any less safely than permit operator vehicles, it emphasised that the “statistical record simply does not support any suggestion that there is a problem with how [CT] minibuses are maintained or driven.”<sup>36</sup> The DVSA accepted it would be a “wise move” to collect and publish data that enabled comparison; the Minister agreed.<sup>37</sup>

***34. We recommend the Department work with the relevant agencies with a view to taking proportionate measures to collect and publish data to enable comparison of the road safety records of different types of road passenger transport operators, including those operating under the section 19 and section 22 permit system.***

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32 Department for Transport ([CTT0234](#))

33 Bus and Coach Association ([CTT0045](#))

34 See, for example, CTA ([CTT0197](#)); Mobility Matters ([CTT0271](#))

35 [Q118](#)

36 Mobility Matters ([CTT0271](#))

37 [Q155](#) [Peter Hearn and Jesse Norman]

## 3 EU Regulations, legal challenges and events since 31 July 2017

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### EC 1071/2009: common rules for road transport operators

35. The legal challenges to CT practice have intensified since EU Regulation EC 1071/2009, which became applicable in December 2011. It sets out common rules for road transport operators, *whether profit-making or not*, in relation to passengers and goods. The Regulation requires operators that deliver services for which passengers *pay a fare* to employ professionally qualified drivers, engage a professional transport manager and obtain professional operator licences.

36. Article 1 of the Regulation sets out two main derogations from these requirements for operators that:

- have “a main occupation other than that of road passenger transport operator”; or
- are “engaged in road passenger transport services exclusively for non-commercial purposes”.

A third derogation is less clearly defined; member states may also exempt operators whose operations have “only a minor impact on the transport market because of [...] the short distances involved.”<sup>38</sup>

37. Until a letter to permit issuers of 31 July this year (described below), the DfT’s position had been that the terms “not-for-profit” and “exclusively for non-commercial purposes” are essentially synonymous. The exemptions from professional licensing requirements for permit holders set out in the Transport Act 1985 and the Department’s *Section 19 and 22 permits: not-for-profit passenger transport* guidance have therefore been widely considered compatible with the European Regulation.

38. Concerns were, however, raised in 2009 by the Confederation of Passenger Transport. Steven Salmon, the CPT’s Director of Policy Development, told us “We felt that the wording of the EU regulation meant that the UK ought to change those parts of the 1985 Act [but] the DfT disagreed.” The CPT did not appear, however, to consider this a major concern. Pressed on the extent to which the CPT had pursued the issue, Mr Salmon said it had been raised “now and again”, but essentially the CPT and DfT had “agreed to disagree”.<sup>39</sup>

39. Mr Allen took up the fight on behalf of a breakaway group of commercial operators by forming the Bus and Coach Association.<sup>40</sup> He claimed his attempts to engage with the DfT over the last six years had been “totally dismissed”. He felt the Department had simply tried to ignore him; he claimed, for example, to have received only one reply to numerous emails during this period.<sup>41</sup>

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38 Council Regulation [\(EC\) No. 1071/2009](#)

39 [Qq 31-2](#)

40 ‘[Section 19/22 Permit](#)’, BCA, accessed 1 December 2017

41 [Q29](#)

40. Mr Allen further claimed the Department received legal advice in 2014, at significant cost, that its position was “unsustainable”. He believed this had represented a “golden opportunity” to begin to address the issues, prior to his taking a formal complaint to the European Commission.<sup>42</sup> Instead, Mr Allen’s complaint to the European Commission resulted in a “notice of infraction”<sup>43</sup> of EC 1071/2009 to the UK Government, which appears to have set in train the events of this year.

41. Stephen Fidler, who was the DfT’s Head of Buses and Taxis Division, with responsibility for CT, from 2015 until very recently, emphasised the difficulty for his predecessors in engaging fully and openly with Mr Allen in the circumstances they faced. While he acknowledged “there may have been opportunities to do things a little differently”, he also told us:

[...] I do not think it would necessarily have led us to a fundamentally different place, given the fundamental difference in what the BCA were seeking as an outcome and what the community transport sector were looking for. Even if there had been some sort of improvement in the process of dialogue with them along the way, we could still have ended up in a very similar situation to the one we have.<sup>44</sup>

**42. As acknowledged by the Department, UK legislation and guidance have not kept pace with developments in community transport practice and European Regulations, and, under intense legal pressure, some changes have now become necessary. The Department did not respond appropriately to address valid concerns over many years, and it acted too slowly. *The Department must consider whether a satisfactory outcome may have been achieved earlier had it tackled relatively localised issues head on several years ago; while now a moot point in relation to the issues at hand, the Department must learn the lessons for its future regulation of policy areas which are its responsibility.***

### Individual DVSA investigation of Erewash Community Transport Ltd

43. Mr Allen has made complaints against numerous CTOs in recent years. In 2016, the DVSA, the executive agency of the DfT with enforcement powers in respect of road traffic law, decided to act upon Mr Allen’s complaint against a CTO in Derbyshire, Erewash Community Transport Ltd (ECTL).

44. ECTL shared with us, in confidence, the DVSA’s letter of 31 July, which set out the findings. The key finding was that, because some of ECTL’s local authority contracts had been won under competitive tender, the operator could not be considered to be engaged in the operation of transport services “for non-commercial purposes”. This was clearly at odds with the DfT’s longstanding position that “not-for-profit” and “non-commercial” were essentially interchangeable terms for the purposes of deciding eligibility for s19 and s22 permits.

45. The letter explained the DVSA’s finding that licensing exemptions did not apply. The fact that ECTL had charitable status, and did not distribute profits, was not, in itself, sufficient in law to justify the exemptions. The DVSA advised the operator that it must

42 Bus and Coach Association ([CTT0045](#))

43 [“DfT acknowledges infraction notice”](#), *Bus and Coach Buyer*, 12 May 2015

44 [Qq 166-7](#)

“take action to bring its operations into line with all applicable legal requirements.” This applied to all its drivers and services, not only those provided under the terms of tendered contracts.<sup>45</sup>

## The DfT's response following the DVSA's findings

### *Letter of 31 July*

46. On the same day, Stephen Fidler, then the DfT's Head of Buses and Taxis Division, wrote to all permit issuers, spelling out the potential broader implications. The key paragraph was as follows:

An operator whose activities are essentially those of a bus company (in that it employs salaried drivers and carries out passenger transport services under contracts won in contestable markets and/or in exchange for fares charged to passengers at more than nominal rates) cannot be regarded as carrying out its activities “exclusively for non-commercial purposes”. That is so even if the operator is a registered charity or other “not-for-profit” organisation.

47. The letter asserted that additional licensing requirements were likely to apply mainly to large, transport-only organisations, and that many, perhaps the majority, of other, smaller, community-based permit holders were likely to remain unaffected. It said the Department intended to:

[...] explain all of this at greater length in a public consultation which we expect to launch in the autumn. This will set out the detailed changes which are required in order to update current guidance, together with proposed amendments to the Transport Act 1985, all of which may help to clarify for permit issuing authorities and permit holders the relationship between the conditions set out in that Act and the derogations set out in Regulation 1071/2009. We will also invite permit holders to provide the Department with more information, so that we can better understand developments in the sector.<sup>46</sup>

### *Uncertainty about potential effects of 31 July letter*

48. Despite the Department's assurances that the new interpretation of the law would affect mainly large, transport-only CTOs and that many, or most, permit holders would likely be unaffected, it was clear from written submissions to our inquiry from more than two hundred CTOs of various types that a wide range of operators expected to experience serious detrimental effects. These included those which, on the face of it, appear to satisfy one or both of the two main derogations from EC 1071/2009, i.e. charities and other groups with a main purpose other than transport and organisations that do not have

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45 Letter from DVSA to ECTL Ltd, 31 July 2017 [not published]

46 Letter from Stephen Fidler, Head of Buses and Taxis Division, DfT, to all s19 and s22 permits issuers, 31 July 2017 [not published]

contracts, openly tendered or otherwise, with local authorities or other bodies, and whose services therefore appear to fall within even the new, narrower, interpretation of “non-commercial”.<sup>47</sup>

49. The CTA explained that:

The nature and scope of a community transport operation cannot readily be defined by size and many smaller organisations will be affected, especially by the changes to driving licensing, even if they continue to operate services using a permit.

It believed many smaller organisations would be unable to meet the costs of PSV operator requirements. While some larger CTOs would be able to meet the costs, the additional burdens would likely force them to scale back services significantly.

50. The CTA reported that a range of organisations were deeply concerned about the implication in the 31 July letter that any service for which passengers pay fares “at more than nominal rates” would be to subject to changes to driver requirements:

The DfT letter suggests that organisations who run services not under contract will be largely unaffected by these changes. [...] we do not believe this to be the case. Initially, it is unclear whether drivers who run services where fares are received to cover costs will have to hold Driver CPC. If so, this would mean many organisations having to fund expensive driving qualifications [...].

The CTA emphasised that CTOs of all kinds rely on volunteer drivers to some extent. It believed a requirement to undertake additional driver training would deter volunteers, and leave “many organisations” with insufficient drivers.<sup>48</sup>

51. The CTA and others noted the complete lack of data on the potential impacts of the changes implied by the 31 July letter.<sup>49</sup> Mobility Matters reported its own data from a survey of CTOs carried out in October. The perception amongst CTOs was that the impacts would be substantial, and potentially catastrophic for some. Some 40% of CTOs that responded reported the implied changes would force them to “cease to operate and withdraw all services”; 14% would have to “consider closing”; and 20% reported the implied changes would lead to “job losses and redundancies”:

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47 See for example, Compaid ([CTT0004](#)); Age UK ([CTT0222](#))

48 CTA ([CTT0197](#))

49 See, for example, West Norfolk Community Transport ([CTT0058](#)); CTA ([CTT0197](#)); Mobility Matters ([CTT0271](#))

**Table 1: Impacts of DfT Proposals - Organisational**

Impact	Percentage of CT Operators Experiencing Impact
Cease to operate and withdraw all services	40%
Job losses & redundancies	20%
Service cuts	15%
Consider closing if can't afford / cope with changes	14%
Suffer financial pressure	14%
Move to O-licence vehicle operations and CPC training	11%
Lose volunteers / drivers	11%
Significant loss of income from e.g. school run	6%
Sell vehicles	5%

Source: Mobility Matters (CTT0271)

52. The CTA told us that transport-only CTOs that “run a mixture of contract and non-contracted services” would be the “hardest hit”. These CTOs were by no means all large, with the financial wherewithal to absorb the costs. The CTA reported that these types of organisations were already running the most “marginal” services and PSV operator requirements would likely make many services unviable.

53. Referring to the larger CTOs, which the DfT’s letter of 31 July described as acting “like bus companies”, the CTA said:

[...] this new guidance risks altering the fabric of what community transport is about. The increased cost of training and licensing will force organisations to compete for more commercial work, and act more like commercial bus operators. Community transport has always worked to deliver more than a contract, and there is a real risk that this unique feature of the community transport sector could be lost.<sup>50</sup>

### ***Real effects on local authority commissioning***

54. The 31 July letter had several immediate and tangible effects. The Association of Transport Co-ordinating Officers (ATCO, the professional association for local authority transport professionals) put out a statement on 15 August. It stated that due to the letter’s “sudden and unexpected nature” it had “not had time to conduct a full review of the implications”. Its advice to ATCO members at that stage was:

As the advice refers to a specific case and circumstances, and the DfT have stated their intention to consult and review s19 and s22 legislation, in the interim our advice is that it is not prudent to award new contracts to community transport groups until issues are resolved, but we do not believe that councils should make any changes to existing contracts it holds with section 19 or section 22 groups until further advice is received from the DfT and/or DVSA, as current contracts were issued in good faith and in line with thinking at the time.<sup>51</sup>

50 CTA (0197)

51 ‘Initial ATCO response to the DfT S19 & S22 letter’, ATCO, accessed 4 December 2017

55. On 13 November, CTOs reported that some local authorities, including Wirral Council, had already taken steps to withdraw contracts.<sup>52</sup> Frank Phillips, Chairman of ECTL, claimed that, as a direct result of the letter, “many county councils are already setting timetables for the withdrawal of section 19 permits”.<sup>53</sup> ATCO’s survey results, provided to the Department in October, showed that 65% of local authorities were not at that stage awarding contracts to permit holders.<sup>54</sup>

56. Kevin Rooney, Traffic Commissioner for the west of England, representing the Traffic Commissioners for Great Britain, said the Commissioners had considered the letter “revised guidance”, to which they must have regard. They had considered, over a period of “a few short weeks” the implications for permit applications, which had caused a “little hiatus” in the applications process. On 27 November, he reported that the applications process had resumed.<sup>55</sup>

57. The DfT’s written submission implied that the Department had not fully understood the nature and scale of the effects of the implied new approach to CT licensing when it issued the 31 July letter. It said it had sought to understand the potential effects, including by asking ATCO, the Local Government Association, the CTA and the Mobility Matters campaign for their assessments, but had not become aware of the scale of the issues until “mid-October.”<sup>56</sup>

58. In oral evidence, Mr Fidler defended the decision to send the letter before all the implications were understood. With the benefit of hindsight, he may have chosen to “make things clearer” in the 31 July letter, but believed not sending the letter at that time may have allowed a worse situation to develop:

There was going to be a vacuum following the decision, if we did not put something out. The choice was whether we, as the Department, put something into that vacuum to seek to provide some information, or whether we allowed it solely to be the domain of the people taking the legal action against DVSA and their approach to it, which would no doubt be put to every relevant local authority directly. I think we would have ended up in a very similar or possibly even worse situation than we are in now.<sup>57</sup>

**59. The Department’s letter of 31 July to all section 19 and 22 permit issuers was well-intentioned but, in the light of its new understanding of the potential effects, some of its content could be deemed ill-judged. In trying to clarify and calm the situation, it achieved the opposite, creating confusion and a level of panic in the community transport sector. The uncertainty led to some local authorities halting commissioning processes and, in some cases, unnecessarily beginning the process of withdrawing contracts from community transport organisations.**

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52 [Q75](#) [Bill Freeman]

53 [Qq 52–3](#)

54 ATCO ([CTT0281](#))

55 [Q139](#)

56 DfT ([CTT0234](#))

57 [Q147](#)

### **Confusion about the status of the ECTL findings**

60. There was considerable confusion amongst witnesses about the status of the DVSA's findings against ECTL, and the extent to which the implications for the broader CT sector could be drawn with any certainty. Mr Phillips told us it was ECTL's understanding that the findings set out in the DVSA's letter of 31 July were preliminary. He emphasised that ECTL had been invited to respond with any concerns or disagreements of fact, which it had done through its lawyers.<sup>58</sup> The CTA believed the ECTL case needed to be settled before the DfT launched its proposed consultation. Bill Freeman, Chief Executive of the CTA, said:

As it is a live case and has yet to run its full course, the nature and content of that consultation cannot be fully appreciated. If the consultation is seeking to take the issues further, as the letter says, there is likely to be a read-across between the situation that faces that community transport operator and others, and it is important that that process is fully exhausted and complete prior to any judgment being made of its wider implications.<sup>59</sup>

Mobility Matters noted that the DfT had referred to the DVSA's findings as a "decision letter [...] as if this was a final ruling". It emphasised that the legal position was that the matter could only definitively be settled by a Traffic Commissioner, or a court.<sup>60</sup>

61. While the DfT confirmed the ECTL case was still live in the sense of ECTL having a right to reply, it considered the DVSA's findings an "enforcement decision": the DVSA had concluded its investigation and "the operator needed to comply". At the moment this decision had been made, a precedent had been set and if "another case [...] came across DVSA's door, they would be obliged to follow the precedent [...]". Mr Fidler argued the Department had acted in the best interests of the CT sector by setting out the potential broader implications and giving potentially affected CTOs time to make appropriate changes to their operating models. In relation to the timing of the proposed consultation, he said:

Our view was that operators could face action at any moment, potentially. As DVSA said, they are under an obligation to respond to complaints. The reason why we put our letter out in the first place was to seek to clarify the position. We think the consultation will help to clarify the position further, providing a degree more detail. Our view is that it will be sensible to progress with the consultation.<sup>61</sup>

### **The respective roles of DfT, DVSA and Traffic Commissioners**

62. Some witnesses noted divergence in approaches to CT permits between the DfT, the DVSA and the Traffic Commissioners for Great Britain, particularly in recent years as the legal challenges have escalated.<sup>62</sup> To illustrate this point, Staffordshire County Council reported a situation that arose in 2016. It told us it carried out a routine compliance check at a special school that contracted a CTO, using s19 permits, to deliver school transport

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58 [Q49](#)

59 [Q51](#)

60 Mobility Matters ([CTT0271](#))

61 [Q145](#)

62 See, for example, Staffordshire County Council ([CTT0191](#)); Strathclyde Partnership for Transport ([CTT0210](#))

services. It found the CTO was using drivers with a D1 entitlement, without driver Certificate of Professional Competence (CPC). Its view was that this was in line with the official guidance. Furthermore, it was “representative of home to school transport operated under contract across the country.”

63. Nevertheless, DVSA Traffic Examiners “unexpectedly [...] interviewed drivers of the CTO’s vehicles under caution”, in relation to their licence entitlements and lack of driver CPC.<sup>63</sup> Staffordshire County Council reported that this incident had a “serious impact” on both the Council and the CTO in question, with the local authority left with no option but to suspend the contracts at issue and find alternative provision at considerable expense. Staffordshire County Council told us neither the DfT or the DVSA “were forthcoming in helping to bring the matter to a timely conclusion”. Neither could provide “a definitive answer as to their interpretation (at that time) of the relevant legislation.” The Council reported that:

It was particularly concerning that no information was forthcoming as to the guidance given to Traffic Examiners in relation to dealing with drivers of Permit vehicles. The matter was, however, concluded when all drivers were written to by DVSA stating that no action was being taken. Contracts were subsequently reinstated on the basis that no enforcement action was taken combined with there being no stated change to guidance.<sup>64</sup>

64. It was clear from oral evidence on 27 November, however, that the DfT, the DVSA and the Traffic Commissioners now share broadly the same interpretation of the law. Kevin Rooney, Traffic Commissioner for the west of England, representing the Traffic Commissioners for Great Britain, said:

We considered that [the DfT’s letter of 31 July] was in line with decisions that we had made, or that personally I had made, with operators in terms of the interpretation of commercial. [...]. There was just a period when we had to reflect on the new guidance—it was different from what was published—to see whether we agreed with it. Broadly speaking, we agree with it.<sup>65</sup>

65. Peter Hearn, the DVSA’s Director of Operations (North) told us the DVSA, as the relevant enforcement agency, had been obliged to investigate the complaint against ECTL. He told us the agency had worked with the DfT “in terms of the guidance they offer”, implying that the DVSA was guided in its investigation by the interpretation set out in the DfT’s 31 July letter. It was clear that any investigations of other CTOs in analogous circumstances would be guided by the same interpretation. Asked if the DVSA was actively seeking to investigate other CTOs, or waiting for further complaints to be made for before doing so, Mr Hearn confirmed the agency would only act in response to specific complaints.<sup>66</sup>

66. The DfT summarised the position as follows:

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63 The original version of this report incorrectly stated that the regional Traffic Commissioner interviewed drivers under caution. The Traffic Commissioners for Great Britain subsequently emphasised they had no involvement in the case cited by Staffordshire Country Council.

64 Staffordshire County Council ([CTT0191](#))

65 [Q139](#)

66 [Q138](#)

Unless [the ECTL], or a future, enforcement case leads to a decision from a court or Traffic Commissioner to the contrary, DVSA will be obliged to consider similar enforcement action if it identifies another CT operator in analogous circumstances. The Agency intends, though, to continue to take a proportionate approach. Where changes are necessary, CT operators should demonstrate to DVSA the urgent steps they are taking to comply with the legal requirements [...].

67. It was also clear that both the DVSA and the Traffic Commissioners were beginning to think about the capacity implications for their respective organisations from a new approach to CT licensing in the longer term, after the consultation and any necessary changes to legislation and guidance (if there were to be significantly more applications for PSV operator licences and PCV driver training, for example). Both believed the scale of change and the capacity implications within the DVSA and Traffic Commissioners' offices should be considered as part of the forthcoming consultation.<sup>67</sup>

### 9 November clarification

68. On 9 November, the DfT issued a note to all local authorities to clarify the circumstances in which CT services might continue to be considered “non-commercial”. These include where:

- There is no commercial market for any of the services which they operate. This includes:
  - where there were no bids received for a local authority contract from commercial operators (like bus, taxi or PHV firms holding a relevant operator's licence); and
  - where a permit holder is running a registered bus service and there are no competing services provided by commercial operators for journeys to and from similar destinations.
- The use of a vehicle is for the purpose of providing transport for people who have paid for non-transport services and the transport provided is merely incidental to the provision of those other services. This could include transport provided by an organisation for the purpose of attending a day centre or lunch club which is arranged by the same organisation; or
- The service consists of an occasional (rather than regular) activity, organised on a voluntary basis (with an unpaid driver) for a specific group of people. This could include day trips undertaken on an *ad-hoc* basis where the passengers share the costs; or
- Any charge made to passengers 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. This could include CT services whose fares are heavily subsidised by voluntary donations.

These clarifications now form part of the DfT's *Section 19 and 22 permits: not-for-profit passenger transport guidance*—a link to the clarifications was added on 28 November, the day after our final oral evidence session.<sup>68</sup>

69. On the face of it, these clarifications do appear to address some of the concerns of the CTOs that submitted evidence to our inquiry, for example those that have stepped in where local commercial markets have failed, and those who are delivering contracts that were not contested by commercial operators. The guidance is clear that contracts being delivered by CTOs in any of the above circumstances need not be suspended or withdrawn. The note to local authorities included a template letter designed to help communicate the changes to local CTOs, including those whose contracts are already in the process of being withdrawn.<sup>69</sup>

70. These clarifications may significantly reduce the impacts of change. ATCO, however, reported that the views of its members were “mixed”, and some were reporting that further clarification was still required, for example about the exact definition of passenger fares “substantially less than the cost of delivering the service”. Sue Davey of ATCO said there were still substantial concerns about the capacity of small-to-medium-sized CTOs caught in the definition of “commercial” to transition to new arrangements. Concerns remained, even amongst the larger CTOs, about maintaining a sufficient number of volunteer drivers, or putting a sufficient number through additional training requirements. She also confirmed a continuing level of paralysis in the CT sector, with “the majority” of local authorities still not commissioning new CT contracts. She said:

Whether that is sustainable for the long term, in terms of budget constraints and the impact that it will have on the operators themselves financially, is very questionable.<sup>70</sup>

**71. The Department's note to local authorities of 9 November is welcome but is itself evidence of the need for very substantial clarification of its letter to permit issuers of 31 July. That it took the Department more than three months to provide a potentially more workable definition of “non-commercial” in the context of community transport services demonstrates the Department's lack of understanding of the sector and the potential effects of its initial proposals. There is still more work to do in fully understanding the implications. *This is highly regrettable and must be addressed. The Department must enhance its expertise, understanding and oversight of community transport, and be able to demonstrate how it has done so.***

**72. *The implacable position of the Bus and Coach Association, driven by Mr Allen, appears to have resulted in the need for change, the Department for Transport's proposed consultation and our inquiry. We recommend the Department seek to re-open constructive dialogue with Mr Allen.***

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68 [‘Operating using community transport \(CT\) permits—Exemptions from Regulation 1071/2009’](#), GOV.UK, 27 November 2017, accessed 4 December 2017

69 [‘Section 19 and 22 permits: not for profit passenger transport’](#), GOV.UK, accessed 4 December 2017

70 [Qq89–92](#)

## 4 Our recommendations for timing and scope of consultation

73. The Department has said its proposed consultation is intended to consider necessary changes to legislation and guidance, to bring it into line with developments in the sector and the relevant European Regulations. While there was broad acceptance that a level of change had become necessary, a range of witnesses were concerned that, by issuing its letter of 31 July and note to local authorities of 9 November, the Department had in effect pre-judged the outcome. There was also widespread concern that the Department had still not fully explained the legal background, or fully understood the likely impacts of its proposals. For example, Peter Shelley, Head of Passenger Transport at Hampshire County Council, which is considered an exemplar for effective community transport provision, said:

My concern is that the letter that came out on 9 November talks about CT operators making urgent progress towards transitioning to a new arrangement. [...] I fear that what we will do is drive out a sector for which we have no alternative, and we will have a smaller level of demand using commercial providers. There are people who are now travelling for whom we will not be able to provide journeys. I certainly hope that the consultation looks at something appropriate for the sector, which is not a one-size-fits-all driver CPC, and so on.”<sup>71</sup>

Leon Daniels, Transport for London's Managing Director of Surface Transport, emphasised that a rush to implement a new system could have dire consequences for people who rely on CT services. He said:

Some of my dial-a-ride passengers only see other human beings outside their houses when they go on their dial-a-ride trip. They book trips to Tesco to have a cup of coffee and buy a couple of items. The social interaction on the journey and at their destination is of great importance to them. Therefore, if the sector were to be driven out of business, both the dial-a-ride services that we provide and the services that they provide using the money they have gained from the contracts, consistent with their charitable objectives in their communities for getting people about, would not happen, and that would be a great pity for society generally.”<sup>72</sup>

CTOs also stressed the wider social value of their work, and the duties of those commissioning public services to have regard to it, as set out in the Public Services (Social Value) Act 2012.<sup>73</sup>

74. The Minister told us he intended to take account of the evidence to our inquiry, and publish the Department's consultation before Christmas. We urged him to also take into account our recommendations before settling on the consultation's scope.<sup>74</sup>

71 [Q106](#)

72 [Q107](#)

73 See, for example, Mobility Matters ([CTT0271](#)); Ealing Community Transport ([CTT0272](#))

74 [Qq 185–9](#)

75. *While the Department has been forced to act under the threat of imminent legal action, its consultation should avoid a narrow, legalistic focus on bringing UK guidance and legislation into line with relevant EU Regulations. The consultation must also be used as an opportunity to consider reforms designed not only to achieve compatibility, but also to maintain achievement of the key public policy objective—the provision of high quality, safe and secure community transport services for people who might otherwise be left isolated. Protection of these services, the huge majority of which are uncontested, and by definition cannot be provided by commercial operators, is imperative.*

76. *We welcome the Minister's commitment to maintain the community transport permit system, and the 9 November proposals to achieve this. Given the current level of paralysis in the community transport sector, we recommend the Department publish its consultation as soon as practicable, but it must include within its scope:*

- *A full impact assessment of the knock-on effects of its proposals, including those issued on 9 November, on core community transport services provided by the diverse range of community transport organisations, and consideration of suitable mitigations to protect the wider social benefits of the UK's unique community transport approach, including:*
  - *the interplay with commissioning bodies' duties under the Public Services (Social Value) Act 2012;*
  - *proposals to maintain the availability of drivers across the community transport sector;*
  - *consideration of the establishment of a distinct, hybrid category of transport-only community transport organisations, according to size, with proportionate licensing and driver training requirements;*
  - *a suitable, clearly communicated transition period before any widespread enforcement of any new regime, and a range of suitable government support for those required to transition to new operating models;*
  - *the likely capacity implications for the DVSA and Traffic Commissioners for Great Britain of any new regime that requires significantly more applications for PSV operator licenses and professional driver training;*
  - *proposals for a clearer division of responsibility for regulation, monitoring and enforcement of the permit and operator licensing systems between the DfT, DVSA and the Traffic Commissioners; and*
  - *proportionate measures to collect and publish relevant data, including on the number of permits issued and the type of work undertaken using those permits, including under public sector contract.*

77. *In the context of exiting the European Union, we recommend the Department for Transport, alongside its forthcoming consultation, begin to consider longer term legislative change to maintain and foster the UK's unique approach to community transport.*

## Conclusions and recommendations

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1. The pressure on community transport organisations to cross-subsidise core, socially valuable work from income earned from contracts such as home-to-school transport has to some extent, in some areas, been driven by a lack of available local authority grant funding in recent years. Further investigation of this may be useful, and we may choose to consider the adequacy of funding for socially valuable but commercially unviable community transport services, and the effects on local transport markets, particularly for home-to-school transport, later in this Parliament. (Paragraph 13)
2. The community transport sector has developed considerably since the Transport Act 1985 came into force. Broadly, community transport organisations have developed their operating models with the acquiescence or encouragement of local government and successive national governments. In particular, they have responded to calls for them to seek out new funding streams and become more business-like in approach. Some have achieved this very successfully at the same time as delivering considerable social benefits. Given that they have acted in good faith, and generally in line with the longstanding guidance, it would now be unjust if planned changes were to be their downfall. In these circumstances, it is incumbent on the Department to handle any necessary changes with particular care and sensitivity (Paragraph 21)
3. The Transport Act 1985 and associated guidance sets out a relatively light touch regulatory and licensing regime for the provision of community transport. For decades, the regime has provided an effective framework within which not-for-profit organisations can effectively plug gaps in commercial provision and provide community-based local transport services to people who would otherwise suffer isolation. Broadly, it still achieves this. (Paragraph 29)
4. Some commercial operators appear to have suffered substantial detrimental effects from potentially unfair competition from community transport organisations in contestable markets. There is, however, a notable lack of reliable evidence against which to assess whether the practices of community transport organisations create widespread unfairness or the geographical extent of the problem. Proposals to address instances of unfairness should be considered in the forthcoming consultation but, given the acknowledged wider social benefits of community transport, the Department should proceed with caution. It must not take a sledgehammer to crack a nut. (Paragraph 30)
5. *We recommend the Department work with the relevant agencies with a view to taking proportionate measures to collect and publish data to enable comparison of the road safety records of different types of road passenger transport operators, including those operating under the section 19 and section 22 permit system. (Paragraph 34)*
6. As acknowledged by the Department, UK legislation and guidance have not kept pace with developments in community transport practice and European Regulations, and, under intense legal pressure, some changes have now become necessary. The Department did not respond appropriately to address valid concerns over many years, and it acted too slowly. *The Department must consider whether a satisfactory outcome may have been achieved earlier had it tackled relatively localised issues head*

*on several years ago; while now a moot point in relation to the issues at hand, the Department must learn the lessons for its future regulation of policy areas which are its responsibility (Paragraph 42)*

7. The Department's letter of 31 July to all section 19 and 22 permit issuers was well-intentioned but, in the light of its new understanding of the potential effects, some of its content could be deemed ill-judged. In trying to clarify and calm the situation, it achieved the opposite, creating confusion and a level of panic in the community transport sector. The uncertainty led to some local authorities halting commissioning processes and, in some cases, unnecessarily beginning the process of withdrawing contracts from community transport organisations. (Paragraph 59)
8. The Department's note to local authorities of 9 November is welcome but is itself evidence of the need for very substantial clarification of its letter to permit issuers of 31 July. That it took the Department more than three months to provide a potentially more workable definition of "non-commercial" in the context of community transport services demonstrates the Department's lack of understanding of the sector and the potential effects of its initial proposals. There is still more work to do in fully understanding the implications. *This is highly regrettable and must be addressed. The Department must enhance its expertise, understanding and oversight of community transport, and be able to demonstrate how it has done so.* (Paragraph 71)
9. *The implacable position of the Bus and Coach Association, driven by Mr Allen, appears to have resulted in the need for change, the Department for Transport's proposed consultation and our inquiry. We recommend the Department seek to re-open constructive dialogue with Mr Allen.* (Paragraph 72)
10. *While the Department has been forced to act under the threat of imminent legal action, its consultation should avoid a narrow, legalistic focus on bringing UK guidance and legislation into line with relevant EU Regulations. The consultation must also be used as an opportunity to consider reforms designed not only to achieve compatibility, but also to maintain achievement of the key public policy objective—the provision of high quality, safe and secure community transport services for people who might otherwise be left isolated. Protection of these services, the huge majority of which are uncontested, and by definition cannot be provided by commercial operators, is imperative.* (Paragraph 75)
11. *We welcome the Minister's commitment to maintain the community transport permit system, and the 9 November proposals to achieve this. Given the current level of paralysis in the community transport sector, we recommend the Department publish its consultation as soon as practicable, but it must include within its scope:*
  - *A full impact assessment of the knock-on effects of its proposals, including those issued on 9 November, on core community transport services provided by the diverse range of community transport organisations, and consideration of suitable mitigations to protect the wider social benefits of the UK's unique community transport approach, including:*
    - *the interplay with commissioning bodies' duties under the Public Services (Social Value) Act 2012;*

- *proposals to maintain the availability of drivers across the community transport sector;*
  - *consideration of the establishment of a distinct, hybrid category of transport-only community transport organisations, according to size, with proportionate licensing and driver training requirements;*
  - *a suitable, clearly communicated transition period before any widespread enforcement of any new regime, and a range of suitable government support for those required to transition to new operating models;*
  - *the likely capacity implications for the DVSA and Traffic Commissioners for Great Britain of any new regime that requires significantly more applications for PSV operator licenses and professional driver training;*
  - *proposals for a clearer division of responsibility for regulation, monitoring and enforcement of the permit and operator licensing systems between the DfT, DVSA and the Traffic Commissioners; and*
  - *proportionate measures to collect and publish relevant data, including on the number of permits issued and the type of work undertaken using those permits, including under public sector contract. (Paragraph 76)*
12. *In the context of exiting the European Union, we recommend the Department for Transport, alongside its forthcoming consultation, begin to consider longer term legislative change to maintain and foster the UK's unique approach to community transport. (Paragraph 77)*

# Formal Minutes

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## Monday 11 December

Members present:

Lilian Greenwood, in the Chair

Ronnie Cowan	Luke Pollard
Steve Double	Laura Smith
Paul Girvan	Iain Stewart
Huw Merriman	Daniel Zeichner

Draft Report (*Community transport and the Department for Transport's proposed consultation*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 77 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the First Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Monday 18 December at 4.30pm]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Monday 13 November 2017

*Question number*

**Martin Allen**, Director, Bus and Coach Association; and **Steven Salmon**, Director of Policy Development, Confederation of Passenger Transport [Q1–47](#)

**Bill Freeman**, Chief Executive, Community Transport Association; **Frank Phillips**, Chairman, Erewash Community Transport Ltd; and **Anna Whitty MBE**, Member of Steering Group, Mobility Matters [Q48–87](#)

### Monday 27 November 2017

**Leon Daniels**, Managing Director of Surface Transport, Transport for London; **Sue Davey**, Association of Transport Co-ordinating Officers; **Dominic Davidson**, Senior Transport Co-ordinator, Staffordshire County Council; and **Peter Shelley**, Head of Passenger Transport, Hampshire County Council [Q88–131](#)

**Jesse Norman MP**, Parliamentary Under-Secretary of State, Department for Transport; **Stephen Fidler**, Deputy Director Road Investment Strategy Client, Department for Transport; **Peter Hearn**, Director of Operations (North), Driver and Vehicle Standards Agency; and **Kevin Rooney** (Traffic Commissioner for the West of England), Traffic Commissioners for Great Britain [Q132-189](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

CTT numbers are generated by the evidence processing system and so may not be complete.

- 1 A1A Travel ([CTT0208](#))
- 2 Aberdeen & Grampian Chamber of Commerce ([CTT0200](#))
- 3 Access Plymouth Ltd ([CTT0030](#))
- 4 Accessible Caring Transport ([CTT0183](#))
- 5 Accessible Transport West Somerset ([CTT0225](#))
- 6 Adapt (NE) ([CTT0137](#))
- 7 Age Concern Shrewsbury Minibus ([CTT0166](#))
- 8 Age UK ([CTT0222](#))
- 9 Age UK Cornwall ([CTT0047](#))
- 10 ALBUM ([CTT0245](#))
- 11 Alness Community Association ([CTT0150](#))
- 12 Annandale Transport Initiative ([CTT0216](#))
- 13 Argyll and Bute Council ([CTT0237](#))
- 14 Ashbourne Community Transport ([CTT0254](#))
- 15 Association of Transport Co-ordinating Officers (ATCO) ([CTT0281](#))
- 16 ATG - Accessible Transport Group ([CTT0232](#))
- 17 Aylsham & district Care Trust (ACT) ([CTT0051](#))
- 18 Bact Community Transport ([CTT0144](#))
- 19 Badenoch & Strathspey Community Transport Co ([CTT0203](#))
- 20 Bakewell and Eyam CT ([CTT0021](#))
- 21 Barmston & Fraisthorpe Parish Council ([CTT0007](#))
- 22 Barnet Community Transport ([CTT0162](#))
- 23 Basildon Community Transport Services ([CTT0136](#))
- 24 Battle Area Community Transport ([CTT0074](#))
- 25 Bearwood Coaches ([CTT0280](#))
- 26 Bedale Community Minibus ([CTT0114](#))
- 27 Berwickshire Wheels ([CTT0098](#))
- 28 Beverley Community Lift ([CTT0134](#))
- 29 Blairgowrie and Diristrict Next Steps ([CTT0046](#))
- 30 Bournemouth Borough Council ([CTT0010](#))
- 31 Brecon & District disABLEd Club ([CTT0089](#))
- 32 Brent Community Transport ([CTT0145](#))
- 33 Brentwood Community Transport ([CTT0087](#))

- 34 Bridgnorth Community Transport Group ([CTT0128](#))
- 35 Bromsgrove and Redditch Network ([CTT0029](#))
- 36 Buchan Dial-a-Community Bus ([CTT0026](#))
- 37 Burton Pidsea Better Transport Group ([CTT0067](#))
- 38 Bus and Coach Association ([CTT0045](#))
- 39 BUSK Limited ([CTT0194](#))
- 40 Cambridgeshire Bus Coach and Taxi Association ([CTT0202](#))
- 41 Castle Minibus ([CTT0157](#))
- 42 Central Lancs Dial A Ride Ltd ([CTT0035](#))
- 43 'CHAIN' - Hungerford ([CTT0053](#))
- 44 Cllr Stephen Hemmings ([CTT0043](#))
- 45 Coalfield Community Transport ([CTT0135](#))
- 46 Coastal Accessible Transport service ([CTT0140](#))
- 47 Community Connexions ([CTT0099](#))
- 48 Community First ([CTT0160](#))
- 49 Community Transport ([CTT0146](#))
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- 51 Community Transport Calderdale ([CTT0164](#))
- 52 Community Transport Sussex CIO ([CTT0219](#))
- 53 Community Transport Swadlincote ([CTT0095](#))
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- 55 Compass Community Transport Ltd ([CTT0082](#))
- 56 Confederation of Passenger Transport (UK) ([CTT0086](#))
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- 58 Councillor Lorna Dupre ([CTT0253](#))
- 59 Creich Croick & Kincardine Day Care Association ([CTT0211](#))
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- 61 CTA Scotland Committee ([CTT0120](#))
- 62 CTLA Community Transport ([CTT0259](#))
- 63 Cuckmere Community Bus Ltd. ([CTT0042](#))
- 64 Daventry Area Community Transport ([CTT0013](#))
- 65 Department for Transport ([CTT0234](#))
- 66 Devon Access to Services ([CTT0108](#))
- 67 Devon County Council ([CTT0147](#))
- 68 Devon Senior Voice ([CTT0207](#))
- 69 Dial A Ride (Scarborough & District) ([CTT0109](#))
- 70 Dial A Ride Denbighshire ([CTT0149](#))
- 71 Dorset Community Transport ([CTT0274](#))

- 72 Ealing Community Transport ([CTT0272](#))
- 73 East Durham Community Transport ([CTT0016](#))
- 74 East Hull Community Transport ([CTT0127](#))
- 75 East Riding of Yorkshire Council ([CTT0079](#))
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- 80 Epping Forest Community Transport ([CTT0249](#))
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- 82 Exe Valley Market Bus ([CTT0031](#))
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- 84 Falkirk Council ([CTT0227](#))
- 85 Fenland Association for Community Transport (FACT) ([CTT0269](#))
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- 90 Go North Devon Ltd ([CTT0059](#))
- 91 Goole & District Community Transport Group ([CTT0180](#))
- 92 GoStart Community Transport ([CTT0182](#))
- 93 GRCC ([CTT0252](#))
- 94 Green Community Travel Ltd ([CTT0012](#))
- 95 Hadleigh Community Transport Group ([CTT0255](#))
- 96 Halesworth Area Community Area Transport Ltd ([CTT0034](#))
- 97 Halton Community Transport ([CTT0261](#))
- 98 Hampshire County Council ([CTT0229](#))
- 99 Harrow Community Transport ([CTT0173](#))
- 100 HART ([CTT0195](#))
- 101 HARTING MINIBUS CIC ([CTT0130](#))
- 102 Hastings Community Transport ([CTT0214](#))
- 103 Hay & District Dial-a-Ride ([CTT0258](#))
- 104 HCT Group ([CTT0138](#))
- 105 Health for all (Leeds) Ltd ([CTT0019](#))
- 106 Hertfordshire County Council ([CTT0218](#))
- 107 High Suffolk Community Transport ([CTT0084](#))
- 108 Hillingdon Community Transport ([CTT0256](#))
- 109 Holt Community Bus ([CTT0049](#))

- 110 Hook Parish Council ([CTT0250](#))
- 111 ILFRACOMBE & DISTRICT CTA ([CTT0073](#))
- 112 Ilkley Community Transport ([CTT0247](#))
- 113 Isle of Anglesey County Council ([CTT0240](#))
- 114 Ivybridge & District CTA ([CTT0097](#))
- 115 J&C Coaches Ltd ([CTT0198](#))
- 116 Keep Mobile Comunity Transport ([CTT0236](#))
- 117 Keith Wood ([CTT0276](#))
- 118 Knotty Ash Community Transport ([CTT0268](#))
- 119 Launceston Community Transport Partnership ([CTT0270](#))
- 120 Linnvale Community Bus ([CTT0076](#))
- 121 Little Green Bus Ltd ([CTT0025](#))
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- 123 London Borough of Barking and Dagenham ([CTT0054](#))
- 124 Lothian Community Transport Services ([CTT0228](#))
- 125 Malmesbury & District Community Transport ([CTT0017](#))
- 126 Marches School ([CTT0112](#))
- 127 Maresfield Parish Council ([CTT0265](#))
- 128 Matt Townsend ([CTT0072](#))
- 129 Melksham Council of Community Service ([CTT0113](#))
- 130 Mendip Community Transport ([CTT0075](#))
- 131 Merseycare Transport Services Ltd ([CTT0132](#))
- 132 Merton Community Transport ([CTT0267](#))
- 133 Minibus Options Ltd ([CTT0106](#))
- 134 Miss Philomena Rhodes ([CTT0124](#))
- 135 Mobility Link Ltd ([CTT0001](#))
- 136 Mobility Matters ([CTT0271](#))
- 137 Mr Alan James ([CTT0188](#))
- 138 Mr Anthony Hill ([CTT0065](#))
- 139 Mr Bill O'Dell ([CTT0018](#))
- 140 Mr David Harrison ([CTT0163](#))
- 141 Mr George Farlow ([CTT0186](#))
- 142 Mr Graham Jones MP ([CTT0205](#))
- 143 Mr Grahame Poulton ([CTT0008](#))
- 144 Mr Ian Ashman ([CTT0096](#))
- 145 Mr John Barrett ([CTT0003](#))
- 146 Mr Michael Horne ([CTT0123](#))
- 147 Mr Steve Jones ([CTT0032](#))

- 148 Mrs Felicity Temple ([CTT0005](#))
- 149 N S Wheelers ([CTT0131](#))
- 150 N S Wheelers ([CTT0165](#))
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- 152 Nevis Partnership ([CTT0264](#))
- 153 Newton Abbot Community Transport Association ([CTT0239](#))
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- 155 North East Combined Authority ([CTT0278](#))
- 156 North East Equality & Diversity (NEED) Ltd ([CTT0238](#))
- 157 North Holderness Community Transport ([CTT0036](#))
- 158 North Norfolk Community Transport ([CTT0088](#))
- 159 North Wealden Community Transport Partnership Ltd ([CTT0092](#))
- 160 North Wealden Community Transport Partnership Ltd. ([CTT0052](#))
- 161 North West Community Bus Association ([CTT0070](#))
- 162 Northumberland County Council ([CTT0206](#))
- 163 Northwood Hire Ltd ([CTT0248](#))
- 164 Norwich Door to Door ([CTT0071](#))
- 165 O Ddrws i Ddrws ([CTT0081](#))
- 166 Okehampton & District Community Transport Group ([CTT0020](#))
- 167 Older People's Commissioner for Wales ([CTT0169](#))
- 168 One Community Transport ([CTT0119](#))
- 169 Order of Malta Dial-a-Journey Trust ([CTT0107](#))
- 170 Oswestry Community Action, Qube ([CTT0101](#))
- 171 Oxford City Council ([CTT0167](#))
- 172 Pagham & District Residents' Association ([CTT0110](#))
- 173 Pembrokeshire Association of Community Transport Organisations (PACTO) ([CTT0102](#))
- 174 People to Places ([CTT0260](#))
- 175 Pershore Volunteer Centre ([CTT0028](#))
- 176 Plymouth Licensed taxi Association ([CTT0061](#))
- 177 Powys Association of Voluntary Organisations & Powys Transport Training Agency ([CTT0199](#))
- 178 Preseli Rural Transport Association ([CTT0078](#))
- 179 Preston Community Transport Ltd ([CTT0159](#))
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- 181 Ravenshead Community Transport ([CTT0179](#))
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- 183 Rhayader & District Community Support ([CTT0133](#))
- 184 Risborough Area Community Bus ([CTT0048](#))

- 185 Road Runner ([CTT0103](#))
- 186 Rye & District Community Transport ([CTT0155](#))
- 187 Ryedale Community transport ([CTT0056](#))
- 188 SCA Transport ([CTT0014](#))
- 189 SCA Transport ([CTT0057](#))
- 190 Sheffield Community Transport ([CTT0233](#))
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- 193 Shipston Senior Citizens Action Network ([CTT0027](#))
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- 196 Shropshire Voluntary & Community Sector Assembly ([CTT0011](#))
- 197 SMCT ([CTT0141](#))
- 198 Soar Valley Bus ([CTT0176](#))
- 199 Somerset County Council ([CTT0111](#))
- 200 South Ayrshire Community Transport ([CTT0139](#))
- 201 South East Dorset Community Accessible Transport ([CTT0204](#))
- 202 South Somerset Association for Voluntary and Community Action ([CTT0177](#))
- 203 South Somerset District Council ([CTT0212](#))
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- 219 The Friendly Transport Service ([CTT0104](#))
- 220 The Highland Council ([CTT0190](#))
- 221 The Impact Group Limited ([CTT0220](#))
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- 223 The Selsey Shuttle CIC ([CTT0009](#))
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- 240 VIP Taxis Ltd ([CTT0161](#))
- 241 Voluntary Action Rutland ([CTT0100](#))
- 242 Voluntary Action Stratford on Avon District ([CTT0080](#))
- 243 Voluntary Sector Mental Health Forum Shropshire Telford & Wrekin ([CTT0168](#))
- 244 Volunteer Centre Nuneaton and Bedworth ([CTT0126](#))
- 245 Volunteer Cornwall ([CTT0230](#))
- 246 Waltham Forest Community Transport Ltd ([CTT0060](#))
- 247 Warwickshire County Council ([CTT0185](#))
- 248 Warwickshire Voluntary Transport ([CTT0178](#))
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- 255 West Oxfordshire Community Transport Limited ([CTT0094](#))
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- 257 Whitbread Wanderbus Ltd ([CTT0152](#))
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- 260 WRCC ([CTT0175](#))

261 Wyre Forest Dial A Ride ([CTT0044](#))

262 Yelabus Association ([CTT0093](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

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