



House of Commons
Transport Committee

**Community transport
and the Department
for Transport's
proposed consultation:
Government Response
to the Committee's
First Report of Session
2017–19**

**Second Special Report of Session
2017–19**

*Ordered by the House of Commons
to be printed 20 February 2018*

Transport Committee

The Transport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Transport and its associated public bodies.

Current membership

[Lilian Greenwood MP](#) (*Labour, Nottingham South*) (Chair)

[Ronnie Cowan MP](#) (*Scottish National Party, Inverclyde*)

[Steve Double MP](#) (*Conservative, St Austell and Newquay*)

[Paul Girvan MP](#) (*Democratic Unionist Party, South Antrim*)

[Huw Merriman MP](#) (*Conservative, Bexhill and Battle*)

[Grahame Morris MP](#) (*Labour, Easington*)

[Luke Pollard MP](#) (*Labour, Plymouth, Sutton and Devonport*)

[Iain Stewart MP](#) (*Conservative, Milton Keynes South*)

[Graham Stringer MP](#) (*Labour, Blackley and Broughton*)

[Martin Vickers MP](#) (*Conservative, Cleethorpes*)

[Daniel Zeichner MP](#) (*Labour, Cambridge*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/transcom and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Gordon Clarke (Committee Clerk), Previn Desai (Second Clerk), James Clarke (Committee Specialist), Andrew Haylen (Committee Specialist), Daniel Moeller (Senior Committee Assistant), Michelle Owens (Committee Assistant), Estelle Currie (Senior Media Officer), and Simon Horswell (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Transport Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3266; the Committee's email address is transcom@parliament.uk.

Contents

First Special Report	3
Appendix: Government Response	3

Second Special Report

The Transport Committee published its First Report of Session 2017–19, *Community transport and the Department for Transport's proposed consultation* (HC 480), on 14 December 2017. The Government's response was received on 12 February 2018 and is appended to this report.

In the Government response, the Committee's recommendations appear in ***bold italicized text*** and the Government's responses are in plain text.

Appendix: Government Response

The Government welcomes this report from the Transport Committee setting out their recommendations, following the inquiry into community transport and the forthcoming consultation on the issue and use of Transport Act 1985 permits.

The Government has long made clear its belief in the vital importance of the services provided by community transport operators. Many community transport operators are in effect also providers of social care services, especially to people who are elderly, isolated and disabled, and they are generally motivated by compassion and philanthropy, not profit.

The Government provides financial support in England through the Bus Service Operators Grant (BSOG). Around £3.5 million in BSOG is forecast to be paid directly to community transport operators this financial year. Additionally, since 2014 over 300 local charities and community groups across England have also received new minibuses through round one of the Community Minibus Fund, and over 400 vehicles have already been delivered to them.

Successive legal challenges now mean that clarity is urgently needed about how Regulation 1071/2009 applies under EU Law to users of section 19 and 22 permits that provide community transport services. Operators, permit issuers and enforcement authorities need to be clear about their obligations and whether they are operating within the correct licensing regime. Greater clarity will save costs and reduce the risk of service disruption to organisations contracting services from permit-holders currently using permits who are found to have misused them. Passengers will also benefit from clarity about how the operators and drivers who provide services for them should be licenced and safety trained.

Within the existing legal framework, the Government wants as many community transport providers as possible to continue to operate, and retain, service provision for vulnerable community transport passengers. The Government has interpreted the exemptions to the Regulation as widely as legally possible.

The Government's response to the recommendations of the Transport Committee are addressed in the order in which they appear within the report.

The Committee may also wish to review the Department's Community Transport Consultation document, recently published.

Conclusions and Recommendations

Comparing Road Safety Records

(Page 25, paragraph 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.

There is no evidence that drivers employed by permit-holders are less safe than their commercial counterparts. The Department's proposed actions are not based on a need to improve the performance of permit-holders in this area. The legal challenges to the Government are primarily based on fair competition and the correct application of law.

It is difficult to see how this comparative road safety data can be collected proportionately, without increasing the related data collection burdens on the relevant enforcement bodies.

The Government already collects and publishes the 'STATS19 road accident statistics' which differentiate between different types of vehicles (such as cars, HGVs, buses, etc.) for accidents involving those killed or seriously injured. This information does not differentiate between community and other types of transport in minibuses and it is difficult to see how a police officer at the roadside could reliably do so. Careful consideration would also need to be given to whether further road safety information is also required.

Effective Policy Regulation and Oversight

(Pages 25 and 26, paragraph 6)

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.

As the Government acknowledged in its oral evidence, there is a clear case in hindsight that too much focus was placed on trying to protect the community transport sector and to determine what the likely impact on it of applying the Regulation could be. The Department has noted the recommendation and is taking this into account in developing future policy, with options being provided to Ministers shortly.

We are also in the process of exploring the establishment of a Working Group composed of both permit-holders and commercial operators to consider longer-term policy development in this area. The group's membership would, it is hoped, ensure that the Department takes a view early on policy discussions which balances the needs of the different groups within the passenger transport sector.

The Department must enhance its expertise, understanding and oversight of community transport, and be able to demonstrate how it has done so.

(Page 26, paragraph 8)

As well as being a consultation on the exemptions to the Regulation, the consultation is also part of a Government fact-finding exercise to improve and enhance our understanding of the sector. The consultation asks permit-operators fifteen questions about how they are structured and how they work in order to increase Government knowledge about the sector and refine our assumptions about policy impacts.

A final Impact Assessment will be prepared using the information collected, to support any proposed changes. This, together with options on the most appropriate mechanism to engage the sector, will be put to Ministers. The Government will continue to seek views from community transport stakeholders and experts as it develops future policy.

Stakeholder Communication

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.

(Page 26, paragraph 9)

The Government accepts this recommendation. The Department for Transport is in contact with Mr Allen, and has committed to meet him during the consultation.

The Focus of the Consultation and Protecting the Valuable Community Transport Sector

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.

(Page 26, paragraph 10)

As was made clear in testimony to the Committee, the Government has a broad and inclusive view of these issues, subject always to legal advice. It shares the Committee's wish to maintain the provision of high quality and safe community transport provision for vulnerable passengers. However, we do not consider that all of the aims above can be met within a single consultation.

Fundamentally, the key legal challenge which Government must urgently address relates to a technical distinction in European law, which means that the forthcoming consultation must primarily focus on bringing UK guidance and legislation into line with the Regulation.

In policy proposals on the scope of exemptions to the Regulation, the Government believes that it has interpreted the exemptions as widely as legally possible, in line with the aim of retaining and protecting service provision. The Government proposes to partially define the ‘non-commercial’ exemption¹ by reference to competition, by making clear that providing transport services which profit-making operators are unwilling to provide should not be considered commercial.

This can assist in protecting the uncontested services mentioned in this recommendation and help ensure that especially in rural areas where commercial operators are often not interested in providing a service, permit-holders are able to continue operating.

The Government agrees with the Committee that issuing guidance to local authorities on procurement approaches together with funding is important to assist the sector.

Additionally the Office of the Traffic Commissioner (OTC) is helping key stakeholders to understand exemptions to the Regulation and all aspects of the requirements for applying for, and holding a PSV licence.

The Scope of Consultation

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:

- 1. 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:***

(Page 26, paragraph 11, bullet point 1)

A full impact assessment will accompany the consultation

- 2. the interplay with commissioning bodies’ duties under the Public Services (Social Value) Act 2012;***

(Page 26, paragraph 11, bullet point 2)

Legally, it is not possible to take into account for the purposes of applying or enforcing the Regulation, any UK legislation which relates to other criteria, for example, the provisions of the Public Services (Social Value) Act 2012.

However, alongside the consultation we will be holding a series of ‘roadshow’ events across the country to meet stakeholders and explain the need to act and our proposals.

¹ Article 1 (4) (b)

This will include meeting local authorities to explore commissioning services and different ways in which the value of community transport organisations can be recognised.

3. proposals to maintain the availability of drivers across the community transport sector;

(Page 27, paragraph 11, bullet point 3)

The Government supports the principle of maintaining the availability of drivers in this important sector.

Data gathered through the consultation will provide an evidence base on the extent of the driver scarcity, whether it is limited to certain locations and allow the Government to consider appropriate policy interventions.

4. 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;

(Page 27, paragraph 11, bullet point 4)

The Government cannot accept this recommendation for legal reasons.

There is unfortunately no flexibility in the law for the UK Government to introduce further exemptions to the Regulation. The Department's view is that the EU rules do not allow the UK Government to establish special rules for transport operators using other criteria, for example the amount of their income or the number of vehicles which they operate or passengers which they carry. The creation of a distinct hybrid category of transport-only community transport organisations would not prevent the Regulation from applying.

Further, we are aware that the current proposals have already caused worry among some operators within the permits sector and it will take time for operators to familiarise themselves with the requirements. Introducing a new category, even if it were legally possible, would create considerable additional disruption to the sector. Therefore Government does not consider that introducing new operating requirements is appropriate at this time.

5. 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;

(Page 27, paragraph 11, bullet point 5)

Again, the Government cannot accept this recommendation.

The Regulation came into force in December 2011. It has had direct effect in UK law since then and the Department's view is that its obligations cannot be waived. Where a community transport operator on legal advice can demonstrate that they are taking urgent action to become compliant, enforcement action will not be taken.

The Department also wrote to local authorities in November to encourage them engage in a dialogue with community transport operators who carry out work for them. Local authorities should establish a compliance timeframe and retain contracts with community transport operators wherever possible.

As part of the consultation the Department will be investigating suitable alternative operating models. One of the consultation questions asks respondents whether they have separated or are considering the separation of commercial operations which require a PSV licence from non-commercial operations which rely on permits, through the use of separate corporate entities.

Where appropriate, the Department or its stakeholders will promote ways in which operators can make a required transition effectively.

6. 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;

(Page 27, paragraph 11, bullet point 6)

The issue of capacity for Driver and Vehicle Standards Agency (DVSA) and OTC staff in processing PSV licences has been considered by the Department and regular discussions between DfT, DVSA and OTC take place. Where enforcement authorities indicate that they require additional support, the Department will respond accordingly.

Data gathered through the consultation will provide an evidence base on the extent to which the Government expects to see any changes in applications for PSV licenses or professional driver training.

7. 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

(Page 27, paragraph 11, bullet point 7)

The remit of the Department, DVSA and Traffic Commissioners is clearly stated on the gov.uk website. The Department has not seen evidence that a clearer division of responsibilities is necessary.

If feedback from the consultation indicates that this is necessary, the Department will consider how to make the separation of duties more clear.

8. proportionate measures to collect and publish relevant data, including on the number of permits issued and the type of work undertaken.

(Page 27, paragraph 11, bullet point 8)

The Government accepts the principle that a stronger evidence base is needed on permit-holders and the work that they carry out.

This consultation represents an opportunity to establish a firmer evidence base than previously available. As stated on a page 3, the consultation document contains fifteen additional questions for permit-holders about how they are structured and how they carry out their work. We will publish this data in the Government consultation response.

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.

(Page 27, paragraph 12)

Exit negotiations are ongoing and until these are concluded the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation, seeking the best outcomes for the UK. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in the future once the UK has left the EU.

The Committee may wish to note the additional factual points below:

The Transport Act 1985 does not govern the Driver Certificate of Professional Competence (DCPC) requirement. Paragraph 2.

Standard section 19 permits may be granted by Traffic Commissioners, designated bodies and local authorities. Large bus section 19 permits and section 22 permits can only be granted by Traffic Commissioners. Paragraph 3.

Section 23(2) (a) of the Transport Act 1985 was repealed by the Local Transport Act 2008. Drivers who drive minibuses under category B (car licence) cannot receive any payment or other consideration for driving, other than out-of-pocket expenses. Drivers who hold a Passenger Carrying Vehicle or D1 (101) entitlement may be paid. Paragraph 15.

For the derogation under the Regulation to apply, it has to be exclusively for the non-commercial carriage of passengers. Paragraph 44.