

Response to the Joint Consultation on Minibus Driving Licence Requirements and Section 10B Permits for Road Passenger Transport in Northern Ireland

Consultation response from the
Commissioner for Older People
for Northern Ireland

December 2017

Scope of this Consultation

The way some of the changes in these consultations have been implemented with excessive haste has already caused confusion for those providing vital transport services to older people that will not be provided by others. The Commissioner thinks that the overall outcome of the changes will be inconsistent with previously stated objectives of the Department to increase access of older people to transport, so they can access services and participate fully in community life.

The Commissioner notes that the Department for Transport will issue a separate consultation, and intend to take additional time to consider the implications of recent cases. The Commissioner would question the accelerated timetable of implementation here. It is particularly problematic that some volunteer organisations have said lack of public awareness means new regulations could be imposed before they had time to put drivers through the appropriate test. ¹

¹ <http://www.newsletter.co.uk/news/lack-of-awareness-over-minibus-licence-changes-1-8209158>

Consistency With Existing Strategies

The strategy outlined in both these consultations directly conflicts with the main vision of the former Department for Regional Development in the Accessible Transport Strategy of a *“Transport network in Northern Ireland that is inclusive and accessible to all. This will enable genuine participation in our community, enhance social inclusion, increase personal independence and travel options for those who may have difficulty travelling.”*² This strategy also referenced that *“older people and people with a disability are often viewed as the most vulnerable within society. They are much more likely to experience difficulty in accessing the opportunities and services that others have no difficulty getting to or from. This can result in higher levels of exclusion and deprivation.....As a Department we have identified that the availability and accessibility of transport is important in addressing social inclusion especially for these groups.”*

The strategy further pledged that engagement should be improved to *“ensure that older people and people with a disability have a voice in shaping transport services”* and states that it aims to deliver the theme by *“continuing to engage positively with older people and people with a disability in the design or deliver of transport services.”* The Commissioner does not believe that these changes will increase the accessibility and availability of transport for the most vulnerable older people, and thinks the sudden change in implementation date has made it significantly harder for older people to put their views forward.

² Department for Regional Development, ‘Accessible Transport Strategy 2025: Consultation Document’.

The Impact on Older People

The Commissioner is also disappointed that this consultation, in assessing no direct impact on older people, does not appear to consider the impact on individual older people and access to health services, as many older people are presently using community transport to travel to appointments. Is the Department considering extra costs which would result from reduction of these services? The screening document does not consider these in sufficient detail. It states that the changes *“may impact on some of the organisations which currently operate under the permit regime, particularly those who provide socially necessary transport on behalf of the Department. The Transport Act (NI) 2011 links the grant funding of socially necessary transport to the possession of a s10B permit so there is a risk that this funding may cease in its current form.”*

The Department itself states that monitoring data on Department transport schemes *“suggests that older people are more likely to avail of transport delivered under a s10B permit,”* and that *“whilst the organisation will be able to continue to provide transport the funding of the Departmental transport schemes is linked to possession of a s10B permit and may cease in its current form.”*

Given this threat to budgets for voluntary and community groups, and the fact that this can be in no way considered to have been fully mitigated by the most determinate pledge in this document, which is that the *“Department is considering options for securing funding for socially necessary transport,”* the Commissioner is alarmed that there has been judged to be no direct impact under the category of age, and the indirect impact is given as ‘minor’. How can the Department conclude this with any certainty when the Department is only at the stage of considering options for securing finance?

The document states reasons in favour of a ‘major’ impact are that *“potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and it would be appropriate to conduct an equality impact assessment in order to better assess them.”* And *“impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged.”* The Commissioner is of the opinion that the measures proposed in this consultation qualify for designation as major impact upon older people. The Commissioner also notes that with ‘minor’ impacts, which have been found by the screening assessment, consideration can be still given to proceeding with an equality impact assessment, or to measures that mitigate the adverse impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations, which would be advisable.

The Commissioner is concerned that the need for a provider to prove they meet the requirements will be an onerous burden for an organisation – namely proving no

equivalent local service is provided by a profit making undertaking, or if no tender was received for a bus contract. It still requires more resources to be expended by an organisation with no certain guarantees of approval, especially when the Department says it does not *“propose to issue exhaustive or rigid guidance as to how it should be determined that there is no market for a service.”*

The Commissioner notes that the proposed revised guidance does not carry any legal weight and only the courts can provide a definitive interpretation of the legislation. Therefore the fact that the ‘derogations’ of token payment being substantially less than the cost of providing the service, and being organised for a specific group of people *“in circumstances that most people would recognise as being non-commercial”* are open to interpretation, and by virtue of the interpretation needed and the fact they might be subject to court proceedings, will most certainly be an off putting factor to those wanting to provide new services and continue existing ones.

The Needs of Older People

The Commissioner believes that not enough attention is being given to the needs of older people in consideration of these changes, especially in rural areas, where, as a result of the reduced availability of public transport routes, the Commissioner is very concerned there will be a significant impact upon older people. There are around 50,000 rural households consisting of older people. 29% of these households where an older person is the Primary Reference Person are situated in rural areas.³ There is a disparity between the numbers of older people in urban (53%) and rural (30%) areas using public transport.⁴

The instances of people who have difficulty with travel due to physical disability or a long standing health problem increase with age. The Northern Ireland Travel Survey showed 38% of respondents aged 60 or over have difficulty with travel due to these factors. In the Department of Regional Development's 2011 survey of transport users 14% of respondents said 'I have difficulty boarding buses or trains', and 6% said that 'other reasons' prevented them from using public transport (which included general health related reasons).⁵ Those aged 60 or over make up the largest proportion of those who have difficulty with travel due to a physical disability or a long standing health problem - 36%. This is higher than other age groups and increases among the people aged 70 or over – 46% of these people reported these mobility difficulties. Having a mobility difficulty reduces an older person's number of journeys a year by around 300. Difficulties with transport can also impact older people when there is an emergency. Travel times to a GP, or A and E, are 45% longer in rural areas.⁶

In the face of these challenges, Community Transport groups have contributed substantial amounts of assistance to older people. 70% of Community Transport organisations have said they carry older people as part of their care activities.⁷ The Rural Community Transport Partnerships, in the areas of most need, are estimated to have 1257 volunteers, provided 608,251 trips to users and take 444,094 bookings a year.⁸

³ <http://www.ark.ac.uk/services/olderpeople1.pdf>

⁴ DRD, 'Attitudes of Disabled and Older People to Public Transport, November 2014-January 2015', <https://www.drdni.gov.uk/sites/default/files/publications/drd/Attitudes%20of%20Disabled%20and%20Older%20People%20to%20Public%20Transport%2C%20November%202014%20%E2%80%93%20January%202015.pdf>

⁵ DRD, 'Northern Ireland Concessionary Fares Users' Survey', <https://www.drdni.gov.uk/sites/default/files/publications/drd/ni-concessionary-fares-users-survey-may-2011.pdf>

⁶ <http://www.ofmdfmi.gov.uk/cardi-research-public-and-community-transport-for-older-people-in-rural-ireland.pdf>

⁷ http://www.niassembly.gov.uk/globalassets/Documents/RaISe/Publications/2012/regional_dev/8112.pdf

⁸ <http://www.gaugeni.co.uk/sites/default/files/resources/RCTP-SROI-Report.pdf>

Minibus Driving Requirements

The potential guidance is excessively complex. Instead of detailing what criteria an organisation has to fulfill to be classified a road transport operator, it states *“some constitutional documents of an undertaking may be sufficiently prescriptive to justify a determination that the operation of road passenger transport is not the main occupation....in other cases, the main occupation of an undertaking should be clear by reference to that undertakings’ day to day activities.”* There is no further clarification in the document or about what the status of voluntary and community transport groups will be under this section.

This guidance must be made clear and presented in plain English terms prior to any commencement of the changes proposed.

The consultation makes the assertion that it is unlikely any distinction can be made on the basis that services operated by not for profit undertakings are by their nature shorter than services operated by profit making undertakings. The Commissioner agrees with the proposition, and is not convinced that a workable clear system could be created by defining services that operate within specific geographical areas or administrative boundaries, especially as the Department admits it does not hold clear information about this at present. It must be a priority to generate this information.

Clarification Given to Drivers:

The guidance ‘clarification’ that gives examples of different drivers and how they are affected is not yet sufficiently clear, with particular regard to the example of ‘Driver Z’, where the volunteer driver receives no payment of any kind – DCPC ‘is required because this is not non commercial carriage for personal use...The driver has no personal connection with the passengers – who are neither relatives nor friends.’ However this is not definitive, as the Department believes this *“requires a judgement call considering in the round a number of issues such as....the relationship between the driver and passengers (for example the degree of social connection, the purpose of the journey, whether money changes hands and in what form”*).

That a permit can be issued for a non commercial service but for the unpaid driver to need a DCPC, is confusing. The introduction of the ‘social connection’ test could impede the delivery of substantial numbers of community transport services provided to members of the public with no direct relationship to the driver, and could unnecessarily restrict them to a ‘friends and family’ basis which would create many practical difficulties. These consultation documents should also contain a clear demonstration of how the Department is defining non commercial, to give operators some basis on which to make future decisions.

Section 10B Licensing

The consultation states under the potential impacts “*Drivers who volunteer for voluntary organisations and receive no payment except for out of pocket expenses will not be affected by the revised guidance.*” In isolation the Commissioner believes this statement is potentially misleading, as it omits to mention that the minibus must be used for ‘social purposes’, and does not consider the simultaneous changes to 10B permits, which may create less opportunities for drivers.

The Commissioner also believes the ‘Some Definitions’ section is potentially confusing in the way it defines a bus being used for reward – it states “*A bus is used for reward if there is a clear and logical link between payment and the transport provided.*” But elsewhere in the documents it says ‘D1’ drivers can drive a minibus on behalf of a non commercial body “*as long as the minibus is being used for social purposes, provided that the minibus is not being used for hire or reward and they receive no payment other than out of pocket expenses.*” The juxtaposition of ‘clear and logical link between payment and the transport provided’ and ‘out of pocket expenses’ (which are defined as “*remuneration for any fuel costs, parking fees, toll fees or similar expenses incurred as part of the trip*”) is potentially confusing.

Nhfr (not for hire or reward) is described as generally meaning “*that you cannot accept any payment, either cash or in kind.*” Although on careful reading the intentions of these different parts of the consultation become apparent, some of the terms are partially contradictory and could be confusing for those trying to plan services. This has been compounded by the different public messages emanating from the Department since the consultation was announced. Some of these have emphasised the “*vast majority*” of community and voluntary organisations will be unaffected⁹, while other statements advise relevant groups to prepare for change.

Community Transport helps older people in many ways – to attend medical appointments, to play a part in community life, to see their family, to shop for necessities, and access a range of other services. The Commissioner believes that the full range of impacts on older people at risk as a result of the proposed changes are not considered in detail. The Consultation does not take account of the class of driver who may be paid by Community Transport groups and operate under a D1 Licence, and therefore does not allow for the negative effect there would be to older people if large numbers of these drivers are no longer able to continue. By not considering this the Department is not recognising the potential impact on many of the journeys taken by older people, and not considering mitigating measures that would protect the current levels of provision to older people.

⁹ http://www.miniplus.co.uk/articles/NI_moves_to__clarify__permit_operation_ahead_of_deadline

Obtaining A DCPC

The Commissioner believes there should be more information on the costs of obtaining a DCPC. In practice this will impact upon individual decisions to comply with the new requirements. Read in isolation the consultation text could be perceived as minimising the practicalities of obtaining a licence for those who will need to do so. After paying training costs (recurring) every 5 years, incurring the costs of doing the test, and paying for the licence, costs will run into hundreds of pounds in the short term and thousands of pounds in the long term, with additional time costs to individuals and organisations. The Commissioner would like to know why these costs omitted from the consultation document.

It is also made clear in the document that the Department asks those who do not come under the scope of voluntary licensing to consider undertaking training. This may in the long term impact on the insurance costs for voluntary groups which have to obtain for their vehicles. Does the Department have any plans to mitigate future rises in premiums which may result?

Equality Impacts

The Department has stated in this consultation that they have undertaken an EQIA screening assessment which has shown no significant impact on any Section 75 group. COPNI cannot comprehend how adequate screening could have resulted in such a determination.

The consultation asserts that, aside from being aimed at drivers and permit holders, it is aimed at other stakeholders who rely on the services provided by the permit holders (which include many older people). However the document does not give equal weight to stakeholders who rely upon these services. It states *“there is limited evidence to suggest that the guidance, in clarifying the position and assisting drivers and operators in meeting their legal requirements rather than introducing any new policy, has a significant adverse impact on any s75 group as it applies **equally to all drivers**. The revised guidance, aims to assist drivers and operators in meeting their legal requirements.”*

There is no further detail about which section 75 groups make up the body of drivers. It does not appear there is sufficient consideration given to the *passengers* who will be affected by these changes, which include substantial numbers of older people. This appears to the Commissioner to be an incomplete and partial assessment of section 75 impacts to incorporate into a consultation document, and a wholly inadequate one on which to base these changes on.

Although it includes more content about the impact on service users, and older people specifically, the Commissioner is confused by the analysis adopted in the screening document. It quotes figures from the 2011 Census showing the correlation between disability and increasing age, but does not appear to take these into account in terms of the *users* of the service, instead then going on to consider the data in relation to drivers – driving licence holders. The Commissioner believes this is the wrong basis on which to found assessment of impact.

The conclusions that *“older people are more likely to avail of minibus transport services provided by the Voluntary and Community sector,”* and that older people and people with a disability are *“often viewed as the most vulnerable in society. They are much more likely to experience difficulty in accessing goods and services resulting in higher levels of social exclusion and deprivation”* are not then developed upon in the rest of the screening document and instead lead on to a conclusion of ‘minor impact’, where the *“guidance is technical in nature and will have no direct impact.”* Some of the evidence provided in this screening document would conflict with this conclusion, and the Commissioner would request that the Department reassess this through a full Equality Impact Assessment. The screening document insists there will be no direct impact on older people by voluntary and community organisations having to obtain the necessary licences, and the indirect impact will be *“minor until the drivers get*

qualified.” This appears to be assuming the costs and time needed to obtain licences will have absolutely no effect on the numbers of drivers available for voluntary and community organisations, and at worst will temporarily delay their availability. Even if this was the outcome, the fact that the licence guidance and the 10 (b) permit guidance are considered separately means we do not have a full picture of how the changes work in conjunction – even if these changes did not impede voluntary drivers, what if changes to 10 (b) permits affected the ability of the organisations they drive for to provide services or to support them obtaining a licence?

The Commissioner is disappointed there is not further consideration of the costs of obtaining a licence in this consultation. The time and money (hundreds and eventually thousands of pounds) to obtain and keep the CPC qualification will be a substantial impact to individuals and organisations. The Commissioner is also disappointed to note that mitigating measures have not been proposed, nor has there been any consideration in this consultation of how these costs will impact the budgets of community and voluntary transport organisations which have already been impacted by spending reductions to programmes like Tackling Rural Poverty and Social Isolation, and how any reduction in available drivers will affect the budgets of government departments who utilise the services.

The consultation document states reasons in favour of a ‘major’ impact are that *“potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and it would be appropriate to conduct an equality impact assessment in order to better assess them.”* Impacts *“are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged.”* The Commissioner is of the opinion that the measures proposed in this consultation most certainly qualify for designation as major impact upon older people. Even if they are not, the Commissioner notes that with minor impacts, consideration should be still given to proceeding with an equality impact assessment, or to measures that mitigate the adverse impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

The Commissioner has already stated in a letter to the Permanent Secretary of the Department for Infrastructure that he requires clarification on how the Department have reached these conclusions about the lack of impact on older people. The Commissioner believes that the implementation timetable should be reviewed and a more phased approach adopted to implementing the level of licensing changes proposed. In these circumstances conducting a full Equality Impact Assessment would be appropriate. Conducting a full EQIA would act as a logical step to consideration of different options like phased implementation or mitigating measures which the Department appears to have ignored.