

Wiltshire Council

Environment Select Committee

6 November 2018

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### Briefing note

## The usage of Section 19 and 22 permits for road passenger transport in Great Britain (Community Transport)

### Summary

Due to a series of concerns raised nationally and in Europe, the Department for Transport (DfT) are undertaking a consultation on the Community Transport (CT) Permit system. This specifically affects CT providers that undertake paid services, even if they are small scale and linked to the local community.

This will increase the regulatory process, meaning CT providers will need to convert their operations to an Operators' licence and their drivers obtain Passenger Carrying Vehicles (PCV) licences. This will significantly increase operating costs. Also, enhanced regulations are likely to reduce the number of volunteers willing to drive minibuses, especially older drivers whom the sector is most reliant upon.

### Background

The 1985 Transport Act established a permit system to enable CT groups operating on a not-for-profit basis to carry passengers in a bus or minibus without the need for a Public Service Vehicle (PSV) operator's licence.

Many permit holders operate small contracted services for local authorities and other bodies, including school transport contracts and registered bus services. However in some cases, they take on bigger contracts and actively compete with the commercial PSV bus and coach sector, which is the case in Wiltshire. A number of local authorities have actively encouraged CT provision to replace subsidised local bus services, which have been cut due to budget constraints.

Nationally, a group of commercial bus and coach operators have raised this as a concern with the European Commission, citing unfair competition as the CT permit system offers a lower cost regulatory system when compared to the PSV regime.

DfT have acknowledged in correspondence (31 July 2017) to issuers of CT permits, including Wiltshire Council, that ***“there has historically been guidance that may have provided an inaccurate indication of the conditions and criteria for operating services under (community) permits”*** which now needs to be addressed to comply with legal requirements, particularly EU regulations.

A public consultation on the use of CT permits was published on 8 February 2018

<https://www.gov.uk/government/consultations/section-19-and-22-permits-how-to-apply-eu-regulation-10712009>

Responses were sought from permit-holders and issuers, stakeholders who rely on the services of permit-holders, (local authorities, NHS trusts, charitable organisations etc), holders of PSV licences and respective representative organisations by 4 May 2018. Wiltshire Council responded to this consultation.

The issues are complex, covering competitively tendered contracts, salaried drivers, derogations within EU regulations and the definition of operating services for 'non-commercial purposes'.

The Consultation questions were designed to obtain comments about the clarification of domestic law and guidance and complying with EU regulations rather than inviting other ideas or options. DfT have made it clear within the consultation documentation that there is

***“no flexibility in the law for the UK Government to introduce further exemptions”.***

DfT envisage that most CT operators will not be affected by this clarification on EU rules. However, this is unlikely to be the case in Wiltshire where 11 of the 22 CT suppliers have contracts and employ paid drivers for the most part.

### **Current Community Transport Provision in Wiltshire**

Wiltshire Council supports a mature CT sector, having encouraged the development of services for over 25 years. The model for CT in Wiltshire is managed differently to most local authorities, as Wiltshire has moved away from the direct employment of say a Community Transport Development Officer type post, and has instead grant funded the services of the voluntary sector to provide an overarching view and support. It is our opinion that the voluntary sector best understands the needs of the voluntary sector and can therefore deliver more effectively in this area. For Wiltshire this is provided by Community First, based in Devizes, who over many years have established, and now support, a vibrant CT sector.

Wiltshire Council has a good working relationship with both our commercial and CT sectors. The CT services complement the local bus network, filling gaps in provision where the market has failed or is unable to provide appropriate services; particularly for vulnerable groups of people including elderly, disabled and rurally isolated passengers.

In addition, over many years, Wiltshire Council has contracted with a Swindon based company Akcess Care Ltd (ACL), who operate on a Section 19 permit basis. Passenger transport is their sole business delivery and they have used the DfT permit guidance, and in particular, the interpretation of those conditions, to create a community interest company. Subsequently, they have amassed, through competitive tender, 45 contracts (60 minibuses) for the delivery of home to school transport, as well as the provision of adult care day service contracts. This amounts to an annual aggregated contract value of around £1.2million.

Wiltshire is by no means alone in having a substantial number of contracts with CT suppliers. The Council therefore believes the impact on the overall CT and use of section 19 permits to be significant.

### **Anticipated Effects of the Consultation Proposals**

Clarification of the definitions affecting CT permit schemes and any exemptions is welcomed and is long overdue, but recognition of the following consequences should be taken into account.

The school, social care and local bus transport contracts which traditional CT groups operate, and get paid for, help the groups to afford to run non-viable routes and additional services such as luncheon clubs, day trips for the local community and provision of access to essential services. This work and any opportunities for operating contracts will be lost to the CT groups, unless they either convert their operations to an Operators' licence and their drivers obtain Passenger Carrying Vehicles (PCV) licences, or they meet one or more of the exemptions to the EU regulations. This also applies to the significant number of contracts that are operated by ACL.

CT groups report that they cannot afford the costs associated with an enhanced regulatory process. The Community Transport Association UK (CTA) estimates the costs for CT groups to become compliant to be at least £11,650 for a one-vehicle, one-driver operation. Additional vehicles and drivers increase these costs significantly. The volunteer trustees of several local CT schemes have reported that they are not willing to continue to operate their services if they are compelled down this route, leaving potential gaps in the network.

If Wiltshire Council wishes to continue to support essential core CT services, this may have to be through a competitive tender process, at potentially additional cost for the authority. Other 'social' or recreational journeys could be lost altogether.

Enhanced regulations are likely to reduce the number of volunteers willing to drive minibuses, especially older drivers whom the sector is most reliant upon. Moreover, there is a local shortage of PCV drivers for commercial bus operators, so funding and retaining volunteers could intensify. There will be increased pressure on CT services, if minibus-based CT services are reduced.

### **Financial Considerations**

Wiltshire Council's support for the CT sector is non-statutory, but it fulfils elements of the business plan, particularly support for vulnerable people and helping them to maintain independence.

The significant risk will be to contracts held by ACL. The annual value of contracts held is £1.2m. Some of the additional cost in moving the business's operation to a PSV footing could be met by ACL, however, the Director has made it clear that a proportion of that cost would need to be passed on.

Once Dft clarification is provided, it is likely that these contracts will need to be tendered on a phased programme; to ensure that the best price is obtained and that competition is maintained. It is at this point that prices will increase by an unquantifiable amount. Therefore, as long as Akcess Care Ltd provide a compliant bid, it is likely that they would be successful in securing most of their current contracts, as the market is largely immature in this area.

A reduction in CT services will be detrimental to community cohesion and has the potential for an increase in public spending to maintain essential transport services for vulnerable people.

### **Action to date**

Wiltshire Council has through Officers and/or Community First:

- made local CT operators aware of DfT correspondence and sector response
- held meetings with Wiltshire's CT operators to discuss the issues and the potential effects on their organisations, services and passengers
- met with the Director of Akcess Care Ltd on several occasions, to discuss the implications of moving to a PCV operation and had regular verbal dialogue
- submitted a response to the Commons Select Committee inquiry (November 2017) into the licensing arrangements for CT minibuses via the Association of Transport Co-ordinators (ATCO)
- Responded to the DfT's consultation
- Wiltshire & Swindon Community Transport, who represent CT operation across Wiltshire have responded to the DfT's consultation
- The DfT responded to the consultation in July 2018, stating it had processed half of the 494 written responses received, but offered no further advice or clarification, other than to say they would respond more fully in the autumn

### **Recommendation**

At the time of writing the briefing note, there has been no further advice or clarification from the DfT, despite the fact that DfT signalled that this information would be available before the summer recess and then again in the autumn.

Therefore, it is recommended that a further briefing note be presented to members when the advice / clarification has been made available.

**Cllr Bridget Wayman – Cabinet Member for Highways, Transport and Waste**

**Parvis Khansari – Director – Highways and Transport**

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