

Driver Licensing Incidental Driving

DfT Guidelines on Incidental Driving of Minibuses

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**DfES Guidelines on Licensing Incidental Drivers of the
School Minibus**

Issued by the
Department for Transport
and
Department for Education & Skills
in April 2006

DfT GUIDELINES ON INCIDENTAL DRIVING OF MINIBUSES

Introduction

1. The Department for Transport (DfT) has published this guidance which has two main objectives:
 - (a) to clarify the legal requirements of driver licensing; and
 - (b) to assist persons such as local education authorities, schools and school employees who undertake (incidental) minibus driving in the course of their employment in determining whether they require an unrestricted minibus licence entitlement (category D1), or,
 - whether they may drive under their car licence entitlement (category B), or,
 - whether they may drive under any other licence entitlement.

The position of incidental drivers is illustrated by reference to the example of teachers driving school minibuses. The guidance does not constitute legal advice nor is it a ruling on the law. Reference to the relevant legislation is detailed at Annex A. The licence entitlement is set out in a flow diagram at Annex B.

2. The Motor Vehicles (Driving Licences) Regulations 1999 allows the driving of minibuses under clearly defined conditions by drivers who hold category B (car) entitlement but have not passed a D1 (minibus) driving test. Those conditions include the following:
 - the driver has held a category B driving licence for at least 2 years;
 - a non-commercial body is using the minibus being driven for social purposes; and,
 - the driver provides his services and receives no consideration for doing so, other than out of pocket expenses.
3. Although drivers who satisfy the conditions are able to drive minibuses the importance of road safety cannot be understated especially in the carriage of schoolchildren. Only competent and trained drivers should be used for this purpose. The DfT recognises that holding D1 Passenger Carrying Vehicle (PCV) entitlement remains the good practice option for schools.
4. The driver and, where applicable, their employer, is responsible for ensuring that the individual driver holds the appropriate entitlement to drive a particular vehicle at any time. The information provided in the following scenarios is intended to help interested parties assess the appropriate driver licensing entitlement.

Pre-1997 licence holders D1 (101) entitlement

5. Drivers who passed a category B test before 1 January 1997 were granted automatically category D1 (not for hire or reward) entitlement. This is shown as code D1 (101) on the licence and enables the licence holder to drive a minibus provided the vehicle is not operated for “hire or reward”. A vehicle which is operated for hire or reward is one where the passengers pay a fare to use the vehicle or a contribution is made towards the running costs of using the vehicle.
6. For example, a minibus is not being used for “hire or reward” where a maintained school operates a minibus and the pupils are not obliged to pay in exchange for the right to be passengers. This may apply also to independent schools where the minibus is not used for a passenger service on a commercial basis but rather to take pupils off-site for curricular purposes. Charitable status may assist this argument.

Drivers who do not hold D1 (101) - not for hire or reward entitlement

7. Since 1 January 1997 drivers no longer receive category D1 (101) entitlement when they pass a category B car test. Anyone wishing to drive a minibus for commercial purposes is required to pass a category D1 minibus test and must meet the higher health and driver conduct standards that apply.
8. Upon passing the D1 test, a driver has full, unrestricted, entitlement to drive a minibus.
9. There are two exemptions to the requirement to obtain a category D1 minibus licence entitlement in order to drive a minibus. The first is an exemption for drivers driving on a voluntary basis and the second is for drivers of minibuses operating under section 19 permits.

Voluntary drivers

10. A category B licence holder may drive a minibus on a voluntary basis if he receives no consideration for doing so, other than out of pocket expenses, for a noncommercial body for social purposes. Such a driver who is not being paid, except for out of pocket expenses or who cannot be compelled to drive is considered to be driving on a voluntary basis. To establish whether a person falls within this category the following points must be considered:
 - Is the organisation a non-commercial body? In general whether a school is a non-commercial body or not will depend on its status. It may be that some independent schools which lack charitable status could be considered to be commercial bodies. It is recommended that schools seek independent legal advice to determine their status.
 - Is the driving for social purposes? It is envisaged that this would encompass most types of driving which school employees could be asked to undertake.
 - Can the driver be compelled by his employer to drive?
 - Is the driver being paid specifically for the driving?

11. If the first two questions can be answered positively and the answer to the latter two questions is no, the driver may be considered to be driving on a voluntary basis.

Section 19 Permit

12. Minibus and Community Bus Permits are issued to organisations concerned with education, religion, social welfare, recreation or other activities of benefit to the community.
13. Minibus permits allow certain organisations to make a charge without having to comply with the full public service vehicle operator licensing requirements and without the need for their drivers to have PCV (category D1 or D) entitlement. The service must be provided for their own members or for groups of people whom the organisation serves. The service must not be provided to members of the general public and the charges made must be on a non-profit basis.
14. Drivers who first held a licence to drive prior to 1 January 1997 will continue to be able to drive minibuses under the Permit Schemes, provided their entitlement to drive minibuses (Category D1, not for hire or reward) remains in force, e.g. that it has not been revoked for medical grounds or expired at 70¹.
15. Drivers who first held a licence to drive cars after 1 January 1997, and the drivers referred to above who have not renewed their minibus (D1 – not for hire and reward) entitlement¹, may drive a permit minibus provided the following conditions are met;
16. Drivers may drive a minibus with up to 16 passenger seats if:
 - i) they drive on behalf of a non commercial body for social purposes but not for hire or reward, unless operating under a permit;
 - ii) they are aged 21 or over;
 - iii) they have held a car (category B) licence for at least 2 years;
 - iv) they are providing their service on a voluntary basis; provided
 - v) the minibus maximum weight is not more than 3.5 tonnes excluding any specialist equipment for the carriage of disabled passengers. Minibuses up to 4.25 tonnes will be permitted in certain circumstances.
17. When driving a minibus under these conditions drivers may not receive any payment or consideration for doing so other than out of pocket expenses, or tow any size trailer. The permits do not extend to driving abroad.

¹ Drivers aged 70 or over will need to make a special application which involves meeting higher medical standards.

Driving for Commercial Purposes

18. In all cases where a minibus is operated for commercial purposes the driver must hold full category D1 (or D) entitlement to drive the vehicle.

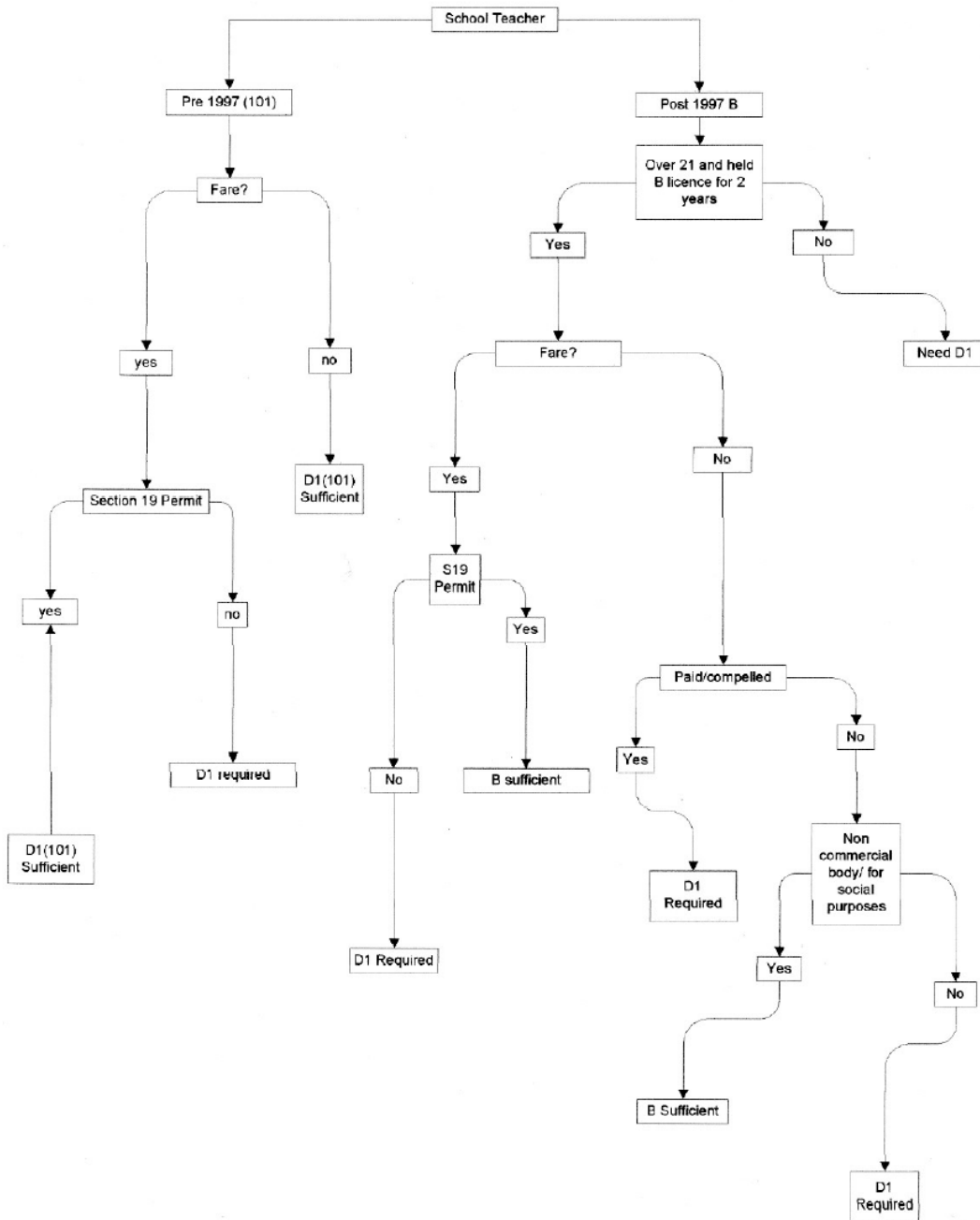
Teachers may also wish to refer to DfES' specific guidance "Health and Safety of Pupils on Educational Visits" available at:
<http://www.teachernet.gov.uk/wholeschool/healthandsafety/visits/>

Annex A: Relevant Legislation

1. The category D1 driving entitlement was introduced by Council Directive 91/439/EEC on Driving Licences (the 1991 Directive). The 1991 Directive requires countries in the European Community including the United Kingdom to introduce a national driving licence based upon a community model. This 1991 Directive also provides for model driving licences authorising the driving of specified categories of vehicles.
2. The provisions of the 1991 Directive are transposed into domestic law by the Motor Vehicles (Driving Licences) Regulations 1999.
3. The 1991 Directive introduces a D1 category driving licence which is normally required for the driving of motor vehicles having more than 8 but not more than 16 passenger seats. Such vehicles are commonly referred to as minibuses and the relevant domestic provisions are contained in Part 1 of Schedule 2 of the 1999 Regulations.
4. In addition to the category D1 driving licence, Article 5(4)(a) of the 1991 Directive also includes a category B licence. The provisions of Article 5(4)(a) of the 1991 Directive are transposed for domestic law in regulation 7(6) of the 1999 Regulations.
5. These provisions allow the driving of minibuses under clearly defined conditions by drivers who hold a category B (car) entitlement and who have not passed a D1 driving test. The conditions are that the driver has held a category B (car) licence for at least 2 years before and the minibus is being used by non-commercial bodies for social purposes and that the driver provides his services on a voluntary basis, i.e. he receives no consideration for driving the minibus than out of pocket expenses.
6. The Minibus and Other Section 19 Permit Buses Regulations 1987 (SI 1987/1230) as amended by SI 1996/3088 and SI 1997/2916 contain the relevant legislation for permits for the use of minibuses and large bus permits.

– Issued April 2006. This version (2) supersedes the previous version issued in February 2006.

Annex B Entitlement Flow Diagram



Licensing Incidental Drivers of the School Minibus

This Statement updates Chapter 6 “Planning Transport” in Health and Safety of Pupils on Educational Visits (DfES 1998, supplemented 2002.)

Summary. *In most circumstances, minibus drivers must hold a D1 PCV (Passenger Carrying Vehicle) licence. However, school staff who hold a car (Class B) licence can legally drive a school minibus without a D1 PCV licence as long as certain conditions are met. The most significant requirement is that staff are not specifically remunerated for driving through their contract of employment or otherwise. The other conditions are set out and explained later in this Statement.*

It would, nonetheless, be bad practice for school staff to drive the minibus solely on the basis that they have held a Class B licence for 2 years. There are a range of options for further training, including the D1 PCV licence and other courses established by employers and others to secure a high level of competence for incidental minibus drivers. The statutory risk assessment process should help an employer choose which good practice option is most appropriate.

The exemption is only for a minibus weighing no more than 3.5 tonnes. In the medium term, when a school replaces its minibus, it is likely to lose exemption because newer minibuses tend to weigh more than 3.5 tonnes, and the Government has no plans to change the weight limit on the exemption. Therefore we advise schools to consider investing in D1 PCV training over the next few years, since the law will require it in the longer term, if or when they move to a heavier minibus.

1. Car driver licences issued before 1997 carried an entitlement to drive a minibus not for hire or reward. Car driver licences issued since then (B category) do not. A category B licence-holder driving a minibus must now also hold a D1 Passenger Carrying Vehicle licence (D1 PCV), unless they meet conditions for exemption which are:
 - the driver is 21 or over and has held a car driver (B) licence for not less than 2 years;
 - the vehicle is being used by a non-commercial body for social purposes but not for hire or reward; and
 - the minibus driver receives no consideration for driving other than out of pocket expenses.

3. It follows that car drivers are exempt from the D1 PCV licensing requirement when they drive a minibus in the course of their employment and are not paid for doing so. This means that most teachers and other school staff may legally drive the school minibus on their category B car driver licence because

their contract of employment does not expressly require them to drive a PCV. See also paragraph 7.

4. Some independent schools which lack charitable status could be viewed as commercial bodies and we advise such schools to seek their own legal advice. There are also restrictions on the minibus weight and on towing a trailer – details available at the DVLA website as below.

Good Practice Options

5. Education employers must ensure, so far as is reasonably practicable, the health and safety of staff and anyone else who may be affected by their activities, including pupils participating in off-site visits. Advanced driver training mitigates the risks to staff and pupils when school staff drive in the course of their work. Acquiring the D1 PCV licence is a good practice option for exempted staff, but there are other options, for example MiDAS (Minibus Driver Awareness Scheme) certificates, awarded on a 4-yearly cycle of training and assessment. The Department for Education and Skills understands there are other training arrangements provided by the Royal Society for the Prevention of Accidents (RoSPA) and that individual local authorities have their own in-house training and assessment schemes. Local authorities and other education employers could consider such training/assessment programmes as these. Chapter 1 of Health and Safety of Pupils on Educational Visits (DfES) sets out the legal requirement about risk management.

Non-Exemption

6. The exemption does not apply where a driver's employment contract expressly states that driving a PCV vehicle is part of the job. Employers of, for example, support staff hired as drivers, or of instructors at outdoor education centres, should check the contracts of these categories of staff carefully before concluding whether or not a D1 PCV licence is required. Employers of part-time teachers working extra hours and being paid additionally for driving a PCV should also check their contract(s) to establish whether a D1 PCV qualification is needed.
7. The exemption does not apply where a minibus exceeds 3.5 tonnes or where a trailer is attached.

Out-of-Hours Driving

7. There are a number of other situations in which the exemption does not apply. These include:
 - driving in other European Member States;
 - driving in the UK during out-of-hours-situations (for example, during school holidays) where pupils or parents have to pay for carriage (unless the bus has a section 19 permit allowing not for profit charging);

- when a teacher is being remunerated under the Teachers' Pay and Conditions Document for driving the minibus on an out-of-school-hours learning activity.

Hire or Reward

8. Where passengers pay for transport, in most cases the driver must hold a D1 PCV licence. The exemption from the D1 PCV requirement applies where the vehicle is used for a non-commercial purpose, for example by a maintained school, and where the pupils are carried not for hire or reward - that is, where pupils are not obliged to pay in exchange for the right to be passengers. It can be argued that independent schools are non-commercial bodies for this purpose. In such schools the minibus is not generally used for a passenger service on a commercial basis but rather to take pupils off-site for curricular purposes. Charitable status assists this argument. Schools who admit pupils on a fee-paying basis may wish to take their own legal advice.

Permits issued under Section 19 of the Transport Act 1985

9. If, however, the school offers the minibus to pupils for a charge but on a non-profit basis under a section 19 bus permitⁱ then the driver is exempt from the D1 PCV requirement. This is because the section 19 permit exempts the employer from holding a PSV operator licence and exempts the driver from the D1 PCV requirement.

Other Guidelines & Further Details

10. The Department for Transport is publishing its own guidance for incidental drivers of minibuses, which addresses the generality of PCV driving situations. It focuses on the PCV test – both as a legal requirement and as the good practice option for exempted drivers – and does not discuss the wider range of good practice options available for school staff. The Driver and Vehicles Licensing Agency provides advice (0870 240 009 or <http://www.dvla.gov.uk/drivers/drmbus.htm>) on D1 PCV or section 19 requirements, and the Driving Standards Agency (0115 901 2500) on the PCV test. Schools and local authorities can 'shop around' the PCV training providers; anyone who has had a D1 licence for three years can be an instructor for the PCV test; and there is no requirement to attend a full-time course. For details of other training/assessment contact, for example, RoSPA at www.rospace.com or MiDAS at <http://www.communitytransport.com/midas/midas.htm> Local authorities and schools may wish to discuss exemption from holding a D1 PCV licence with their insurer. They may also wish to bring this Statement to the attention of other local agencies including the police.

ⁱ Directive 1991/439/EEC ('the 1991 Directive') sets out a harmonised system of driving licences throughout the European Union. It is implemented in the UK by section 18 of the Transport Act 1985 and two sets of regulations. These are the Minibus and Other Section 19 Permit Buses Regulations 1987 and the Motor Vehicles (Driving Licences) Regulations 1999.

Certificate of Professional Competence.

11. From September 2008 all new professional bus drivers must also pass an initial qualification to obtain a Certificate of Professional Competence (CPC)ⁱⁱ. This will be on top of the D1 requirement though it is likely that the training for the acquisition of a D1 licence could be combined with the initial qualification CPC training. All professional bus drivers will have to take periodic retraining on a five-yearly cycle. The Driving Standards Agency consulted to February 2006 on the regulations that will implement this requirement in the UK. Most school staff, whether they hold a D1 PCV licence or not, will be exempt from this requirement. This is because the regulations will exempt drivers of vehicles used for the non-commercial carriage of passengers.

Relevance of this Policy Statement

12. This Statement is also relevant to non-school drivers who drive minibuses for non-commercial purposes incidentally in the course of their employment (for example in childcare or in colleges of further education) or in volunteering activity.
13. The text of this Statement replaces:
 - paragraph 134 of the DfES guidance, Health and Safety of Pupils on Educational Visits
(<http://www.teachernet.gov.uk/wholeschool/healthandsafety/visits/>)

The Royal Society for the Prevention of Accidents is amending paragraphs 3.6.3 – 3.6.5 of Minibus Safety: A Code of Practice 2002 (RoSPA and others).

DfES April 2006.

ⁱⁱ Directive 2003/59/EC of 15 July 2003 ('the 2003 Directive') imposes qualification and training requirements (Certificate of Professional Competence) on drivers of certain types of vehicle including vehicles for which a D1 PCV licence is normally required. In the UK, the 2003 Directive will take effect on professional bus drivers by September 2008 and lorry drivers by September 2009.