

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 non-commercial 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.

¹Drivers 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.

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