Dear Lilian,

COMMUNITY TRANSPORT UPDATE

Thank you for your letter of 28 January asking for progress on community transport policy. I would like to inform you that today the Department is publishing guidance and a Government response to the 2018 consultation about how EU Regulation 1071/2009 on operator licensing applies to community transport operators which use permits under the Transport Act 1985.

This will provide greater clarity to the community transport sector so that many operators can continue to play a valuable role in improving the lives of the passengers that they serve.


I am also making new legislation to give legal effect in Great Britain to an additional exemption to that Regulation, the ‘short distance’ exemption, by defining that distance and allow for local circumstances to be considered when making decisions about this exemption. This can be particularly helpful in rural areas where community transport is often the only transport option.

The Department echoes the Committee’s wish to maintain high-quality, safe and secure community transport services for vulnerable passengers and recognises the importance of considering long term change to foster the UK’s unique community transport sector, as the Committee suggested in its report.
Therefore, the Department will carry out a review of the current domestic permit regime in 2019, to see if the Transport Act 1985 is still fit for purpose and provides the correct balance for the bus sector as a whole. The terms of reference will be drawn up in due course but are likely to include a review of permit issuing bodies and whether there should be limits on the size of operations.

My ministerial colleague, Jesse Norman MP, as well as officials from the Department met with representatives from the Bus and Coach Association in 2018. Unfortunately, despite those engagements, in December 2018 solicitors acting on behalf of the Bus and Coach Association applied to the High Court for permission to judicially review the Department’s current position in respect of community transport. Specifically, they are challenging the Department’s approach to the exemption from EU Regulation 1071/2009 that requires permit-holders to operate “exclusively for non-commercial purposes”, which has been at the heart of the current debate about community transport.

The judicial review meant that the Department had to reconsider its guidance on this exemption which formed part of the Government’s consultation on community transport last year. While legal proceedings are ongoing the Department is not in a position to make any further statements about what “exclusively for non-commercial purposes” means and finalise this aspect of the guidance.

I recognise that, in the short-term, the judicial review might create additional uncertainty for the community transport sector. However, it should eventually result in a definitive judicial interpretation of the term, resolving the long-running debate about what it means and provide a way forward on this issue. Once the outcome of the judicial review is known, the Department will amend the guidance to bring it into line with the Court’s decision.

Until the legal position on what “exclusively for non-commercial purposes” means is clear, the Department continues to recommend that local authorities do not end existing contracts with community transport operators and allow them to tender for new community transport contracts. Departmental officials will continue to provide advice to any local authority that may wish to discuss their policy in respect of community transport organisations and can be contacted at buses@dtf.gov.uk.

As I stated in my October letter to you, the Traffic Commissioners are independent of Government and one of a number of issuing bodies. Decisions on the suitability of individual applicants for permits are for the issuing body to determine, and not something in which Ministers can intervene.
Traffic Commissioners must apply the law as made, subject to any interpretation by the higher courts. There has been recent official-level engagement with Office of the Traffic Commissioner staff and we are not currently aware of any differences of opinion on the broad interpretation of the exemptions. However, as you say Traffic Commissioners are free to reach different interpretations from the Department about the scope of exemptions to the Regulation.

The Government has interpreted the exemptions to the Regulation as widely as legally possible. This will maximise the remaining avenues of exemption and should ensure that as many community transport providers as possible continue to operate, and retain, service provision for vulnerable community transport passengers. The Department has consulted local authorities on the guidance to get the best balance for both community transport and commercial transport operators.

The guidance explains that whether an organisation meets an exemption, such as the ‘main occupation’ exemption, will be decided on a case-by-case basis. By way of example, a small community centre that carries out a range of activities including using minibuses to provide trips out to their members, could apply for a permit. Some key considerations involved in meeting the exemption criteria would include whether they demonstrate that non-transport activities consume most of their time and resources, and generates most of their income.

Departmental officials have been liaising with the Local Government Association (LGA), the Association of Directors of Environment, Economy, Planning and Transport (ADEPT) and the Association of Transport Coordinating Officers (ATCO) to update all local authorities about what we are doing and why. We will continue to work closely with local authorities and organisations such as the Community Transport Association and the Mobility Matters campaign to look at sector impacts.

I would like to suggest that we meet to discuss the recent changes in greater detail and to continue to work together to provide support to the sector. Please let me know if you agree with this suggestion and I will ensure that a meeting is arranged.

Yours sincerely,

NUSRAT GHANI