



Northumberland
County Council

**School Minibus
Advice and
Guidance**

We insist that all drivers employed by Northumberland County Council hold category D1 minibus entitlement on their driving licence. Although there are circumstances where the law allows drivers in the voluntary sector to drive on a car licence (category B), the Freight Transport Association advise that the exemption does not apply to school teachers nor anyone else driving in the course of their paid employment. This is regardless of whether their contract of employment requires them to drive.

A minibus is defined as a Passenger Carrying Vehicle with 9 to 16 passenger seats, plus the driver. Car drivers who obtained their licence after 1 January 1997 are limited to vehicles with up to 8 passenger seats and a maximum weight of 3.5 tonnes; many minibuses weigh more than this. To obtain a minibus licence they must pass a medical and the Passenger Carrying Vehicle theory and practical driving tests. Non-commercial drivers, such as school teachers, are exempt from the new Driver CPC.

Drivers who passed their car test before 1997 were automatically granted D1 entitlement for non-commercial use (known as “not for hire or reward”). Provided they continue to hold this entitlement, they are licensed to drive minibuses, but it should be noted that when they reach 70 years of age they must pass a medical and apply to DVLA to retain D1 when renewing their licence.

Please do not accept the advice of anyone selling a minibus regarding the legality of driving a school minibus on a car licence.

Reasons why teachers need a D1 entitlement:

1. Teachers and other school staff are driving the school minibus for their paid employment. A teacher’s contract may not detail every activity and duty they carry out, but they receive a salary for doing so and they are subject to employer discipline for any negligence or misconduct whilst doing so, even outside normal school hours. We therefore conclude they receive payment or consideration for their work including

driving, which is prohibited by the driving licence regulations when driving on a car licence.

2. The exemption for driving on a car licence stipulates that the journey must be for social purposes: school trips are official school business – if a member of staff took some pupils as passengers in their private car, they would need business use insurance cover as it would not be covered by a social, domestic and pleasure policy.

3. The exemption only applies to minibuses with a maximum weight of 3.5 tonnes fully loaded, excluding any specialised equipment for carrying disabled passengers. Many newer minibuses are over this weight limit; e.g. Ford Transit is 4.1 tonnes. The weight limit will not be changed. If a teacher relied upon the exemption and drove a minibus weighing less than 3.5 tonnes, the school might then replace it with a new heavier vehicle and the teacher could end up driving illegally if this was not identified.

4. There has been no test case in court to determine this matter. Whilst various advice documents including some issued by central government state driving on a car licence is OK. These are expressing opinion and carry no weight in law. Northumberland County Council's position is to be prudent, rather than risk prosecution.

Background

Drivers who passed a car test before 1997 were given restricted minibus entitlement for non-commercial use, known as D1 not for hire or reward; this covers people such as teachers driving for schools. These pre-97 licence holders were also given category C1 for medium goods vehicles up to 7.5 tonnes and entitlement to tow trailers. Schools generally operate minibuses under a Section 19 Permit, which enables them to accept payments from their pupils and to use drivers that have D1 not for hire or reward entitlement. All Northumberland County Council's drivers who passed their license before 1997 must hold a current MiDAS certification, issued following an assessment of their competence by a MiDAS Driver Assessor Trainer.

Since 1 January 1997, passing a car test no longer gives entitlement for C1 or D1 or towing a trailer without passing additional driving tests. A car licence (category B) is

limited to vehicles up to 3.5 tonnes Maximum Authorised Mass (MAM) with no more than 8 passenger seats. To gain D1 these drivers have to pass the Passenger Carrying Vehicle (PCV) test. All this came about through EU driving licence harmonisation. However, the UK negotiated derogation for the voluntary sector that enables people to drive a minibus in the UK on a car licence under a list of conditions (see below). The argument is over the high cost of training for the PCV test, and whether the exemption can apply to teachers, but it has never been tested in court.

The conditions for the exemption are stated in the Motor Vehicle (Driving Licence) Regulations 1999 (SI 1999/2864):

7. Competence to drive classes of vehicle: special cases

(6) A person who—

(a) holds a relevant full licence authorising the driving of vehicles of a class included in category B, other than vehicles in sub-categories B1 or B1 (invalid carriages),

(b) has held that licence for an aggregate period of not less than 2 years,

(c) is aged 21 or over,

(d) if he is aged 70 or over, is not suffering from a relevant disability in respect of which the Secretary of State would be bound to refuse to grant him a Group 2 licence, and

(e) receives no consideration for so doing, other than out-of-pocket expenses,

may drive, on behalf of a non-commercial body for social purposes but not for hire or reward, a vehicle of a class included in sub-category D1 which has no trailer attached and has a maximum authorised mass—

(i) not exceeding 3.5 tonnes, excluding any part of that weight which is attributable to specialised equipment intended for the carriage of disabled passengers, and

(ii) not exceeding 4.25 tonnes otherwise,

unless such a person is by that licence authorised to drive only vehicles having automatic transmission, in which case he shall be deemed competent to drive only such vehicles in sub-category D1 as conform to the above specifications and have automatic transmission.

Northumberland County Council's position

There is no decided case law as to whether a teacher requires D1 entitlement on their licence when driving the school minibus. Due to the uncertainty of the law, it is council's position to be prudent. Legal advice that there is a strong risk of prosecution for driving without a proper licence for the vehicle.

The view continues to be that the only reason a teacher is driving a school minibus is because of their paid employment with that school. This includes driving outside of school hours and at weekends, since a teacher's contract does not state daily hours of working, only an annual number of hours of "directed time". They are therefore "receiving a consideration", since their salary cannot be considered "out of pocket expenses".

The Council's view is shared by a number of other local authorities, the Royal Society for the Protection of Accidents (RoSPA.) and the Freight Transport Association (FTA.).

Without a D1 entitlement, the risk remains that an employee could be prosecuted for driving without a proper licence, and the employer could then be prosecuted for causing or permitting someone to drive unlicensed. If convicted, there could be a heavy fine, court costs and the added implications of negative publicity both to the council and the school. If the case were proven then the vehicle and driver would not be insured so any financial liability would fall on the council

A final point

A member of AIRSO (the Association of Industrial Road Safety Officers), who is a consultant on driving licence matters, supports our position and believes that a court would be highly likely to find that a driver should hold D1 in these circumstances.

Naturally, we would not wish an employee of this council to be the test case. Most important of all is to fulfil our Duty of Care to the pupils and indeed our staff.

Despite explaining all of this on many occasions, we continue to receive enquiries from schools. We feel there is a need to clarify this issue to schools confirming the council's position and asking that schools accept the situation. We therefore ask for your understanding of our position as outlined above. Academy status schools may wish to obtain their own legal advice, but we hope they will follow our policy.

Definitions

A Minibus is a vehicle built or adapted to carry 9 to 16 passengers plus the driver, with no standing passengers allowed.

The driving licence entitlement for minibuses is Category D1.

Hire or reward is any sort of payment by passengers that gives them a right to be carried. It does not refer to the driver being paid.

Summary

1. All drivers must hold category D1 on their driving licence to drive a minibus at any time for the organisation or school that employs them.
2. Staff who only have a car licence and wish to drive a minibus must pass a medical and the PCV theory and practical driving test to add D1 to their licence.
3. Because D1 training content and assessment exceeds that of MiDAS, once a driver has D1 on their licence, there would only be a requirement to undertake an additional MiDAS certification in certain cases. MiDAS should be considered in the following circumstances:
 - If a driver only drives a mini bus occasionally. Experienced drivers who drive a minibus on a regular basis would not be required to undertake this.
 - If the mini bus being driven has a tail lift or where disabled passengers are being transported. This is because MiDAS provides additional training in this aspect which is not covered in D1 training.

If, following an assessment, it is deemed that MiDAS training is required, a driver would only need to undertake their first MiDAS certification 4 years after the date of passing their D1. This would be issued following an assessment of their competence by a MiDAS Driver Assessor Trainer. There would then be a requirement to renew this every 4 years.

4. All Northumberland County Council's drivers who have D1 (*code 101) on their licence (who passed their test before 1997) must hold a current MiDAS certification.

*D1 entitlement for non-commercial use (known as “not for hire or reward”)